

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016041030

ORDER FOLLOWING PREHEARING
CONFERENCE GRANTING
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On May 16, 2016, a telephonic prehearing conference was held before Administrative Law Judge Marc Levine, Office of Administrative Hearings. Parent appeared on behalf of Student. Daniel Harbottle, Attorney at Law, appeared on behalf of Capistrano Unified School District. The PHC was recorded. The parties jointly requested a continuance and new dates for the PHC and Due Process Hearing.

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. Student is in the process of hiring an attorney. That attorney was not present at the PHC, and so dates were set without confirming the availability of Student's counsel. The parties are interested in mediating and will submit a joint request for mediation, with agreed upon dates, once Student's counsel has been consulted. The request is:

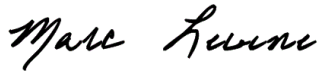
☒ Granted. All dates are vacated. The parties may file a second joint request for continuance, if necessary, establishing good cause based on Student's attorney's unavailability at the May 16, 2016, PHC. This matter will be set as follows:

Prehearing Conference:	June 27, 2016, at 10:00 AM
Due Process Hearing:	July 6, 2016, at 9:30 AM, continuing day to day beginning at 9:00 AM, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: May 17, 2016

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MARC LEVINE
Administrative Law Judge
Office of Administrative Hearings