

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 2021100313

ORDER GRANTING CAPISTRANO'S REQUEST FOR
CONTINUANCE AND SETTING PREHEARING CONFERENCE
AND DUE PROCESS HEARING

NOVEMBER 22, 2021

On November 22, 2021, Capistrano Unified School District filed with the Office of Administrative Hearings, referred to as OAH, an initial request to continue this matter, based upon a scheduling conflict with the original dates set for hearing. The prehearing conference is scheduled for November 29, 2021, and the due process hearing on December 7, 8, and 9, 2021.

Capistrano's attorney established that the attorney and Capistrano had a hearing in another OAH matter scheduled for December 7, 2021. The attorney also established through a declaration under penalty of perjury that, while Student's counsel did not

oppose a continuance, Student was opposed to a continuance to the dates Capistrano requested in March 2022.

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Capistrano has established good cause for a short continuance in consideration of a conflict for Capistrano and its attorney with another due process matter scheduled for the same date. However, whether or not Capistrano's counsel has multiple hearings scheduled on future dates through February 2022 is not a relevant

consideration as to this motion or good cause to continue the matter to March 2022. Those other matters are not imminently scheduled for hearing or already in progress such that they create a conflict with the current hearing dates.

Accordingly, Capistrano's motion is granted as modified by this Order. All dates are vacated and this matter is continued for good cause as follows:

Prehearing Conference will be held on January 10, 2022 at 10:00 a.m. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date. Participant information forms must be filed no later than two business days before the prehearing conference.

The Due Process Hearing will be held on January 25, 26 and 27, 2022. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, 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 their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings