

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 2021100718

ORDER DENYING REQUEST FOR CONTINUANCE

DECEMBER 10, 2021

Capistrano Unified School District filed a motion to continue the prehearing conference and due process hearing on December 8, 2021, based on the unavailability of its counsel and district witnesses during the dates originally scheduled for hearing and during the first week of January 2022. Capistrano requested hearing dates on January 11, 12, and 13, 2022. The motion was timely filed three days prior to the prehearing conference. Student filed an opposition to the motion on December 10, 2021.

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. Student filed this matter on October 25, 2021. The hearing is currently scheduled for December 22, 23, and 24, 2021. The parties estimate the hearing will last three to six days. OAH is not dark on the dates scheduled for hearing. Capistrano asserts that it is closed for winter break and that, generally, its staff members are "unavailable to testify" through January 3, 2022. Capistrano has not provided good cause for a continuance of the hearing dates by identifying which specific witnesses are not available or why Capistrano did not seek a continuance sooner. Capistrano's assertion that the district is "closed" is insufficient to establish that the hearing cannot commence as scheduled. Similarly, Capistrano's assertion that its attorney is not available during the first week of January is irrelevant to the current hearing dates.

The request is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings