

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 REQUEST FOR MEDIATION AND
DENYING REQUEST FOR CONTINUANCE OF THE HEARING

FEBRUARY 16, 2022

On October 11, 2021, Student filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing, naming Capistrano Unified School District. On November 22, 2021, OAH granted the request by Capistrano Unified for a continuance of the hearing from December 7, 2021 to January 25, 2022 because its counsel had a hearing in another matter. The Order stated that motions were due to OAH no later than three business days before the prehearing conference, or PHC, or with evidence of good cause why it was not possible to file the motion by that date.

On December 20, 2021, OAH granted the parties' mediation request. The mediation was scheduled for January 4, 2022 from 9:00 AM to 4:30 PM. A mediation of less than two hours was held on January 4, 2022.

On January 6, 2022, OAH granted Student's motion to amend the complaint and scheduled the PHC for February 14, 2022 and the hearing for February 23 and 24, 2022. The Mediation and Due Process Hearing Instructions sent with the January 7, 2022 Scheduling Order advised the parties that prehearing motions were due no later three business days prior to the PHC or show good cause why it was not possible to file the motion by that date.

On February 10, 2022, Student filed a second motion to amend, along with a proposed second amended complaint. By the amendment, Student sought to add Issue 14 regarding whether Capistrano Union's failure to include cognitive-based assessments denied Student a free appropriate public education, or FAPE. On February 11, 2022, Capistrano Unified filed a notice of non-opposition to the motion to amend.

On February 10, 2022, Student filed a motion to bifurcate and trial by brief. Student contended that Issue 14 should be decided first in a separate hearing through briefing instead of a full evidentiary hearing. On February 11, 2022, Capistrano Unified filed opposition to the motion to bifurcate.

On February 14, 2022, the PHC was held. The ALJ advised the parties that the tentative ruling was to deny both motions. The parties argued the pending motions and the ALJ took them under submission. The parties indicated their intent to file a joint request for mediation and a continuance of the hearing, which the ALJ ordered be filed by February 15, 2022. The ALJ also ordered that any joint request was required to

specifically address their failure to file the request three days before the February 14, 2022 PHC.

On February 15, 2022, OAH denied both the motion to amend and the motion to bifurcate and trial by brief.

On February 15, 2022, the parties filed a joint request to continue this matter to March 29 and 20, 2022 so they can mediate the case on February 23, 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. The request is:

Denied. The joint request for mediation and continuance of the hearing was untimely and parties have failed to demonstrate good cause why it was not possible to file the joint request three days before the PHC. The parties primarily base their failure to earlier file their request on their discussions beginning on February 7, 2022 regarding the issues related to *Larry P. v Riles* (9th Cir. 1984) 793 F.2d 969 (*Larry P.*). However, the *Larry P.* issue was in the original complaint filed in October 2021 at Issue 7, and in the amended complaint filed on January 6, 2022 at Issues 5, 8 and 11. The parties have offered no adequate explanation why they waited until February 7, 2022 to discuss narrowing the *Larry P.* issue or how those belated discussions justify their failure to timely file the joint request by February 9, 2022. The parties' delay until the 11th hour to discuss the *Larry P.* issues does not justify their untimely filing. Furthermore, as explained in the Order Denying Motion to Amend and Motion to Bifurcate and Trial by Brief, the proposed second amended complaint did not raise any new issues by Issue 14 since it was essentially a repackaging of Issues 5, 8 and 11. In any event, the motion to amend to permit the filing of the second amended complaint was denied on February 15, 2022. As such, the alleged "reframing" of the *Larry P.* issue or the parties' agreement to hold a resolution session on February 23, 2022 based on the proposed second amended complaint is not an appropriate basis to grant a further continuance of the hearing.

Nor is the fact that OAH is dark during the week of February 28, 2022 for its annual ALJ training a basis for a further continuance or demonstrate good cause for late filing of the joint request. The argument that a break in the hearing from the week of February 23 to the week of March 7, 2022 will result in a disruption of witness

scheduling is not supported by any specific facts and it is not mentioned in either declaration filed with the joint request. In addition, the parties were on notice well before the February 9, 2022 deadline for filing their joint request that OAH would be dark the week of February 28, 2022 because it was posted to OAH's website.

The hearing dates are confirmed and shall proceed as calendared. The hearing shall begin on February 23, 2022. Because the hearing is scheduled to begin on February 23, 2022, a mediation on that date is not available. However, because the parties have requested another opportunity to mediate before the hearing, OAH can accommodate that request. OAH is available to mediate the case on February 22, 2022. If the parties would like OAH to schedule a mediation on February 22, 2022, they shall make that request in writing by the close of business on February 17, 2022 and indicate whether they want a full day or half day mediation and if a half day, whether they request a 9:00 AM or 1:30 PM start time.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Laurie Gorsline".

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings