

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

CAPISTRANO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023100123

OAH CASE NUMBER 2023060253

ORDER DENYING REQUEST FOR CONTINUANCE

JANUARY 31, 2024

On June 8, 2023, Capistrano Unified School District filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing in OAH case number 2023060253, Capistrano's Case, naming Student.

On June 15, 2023, OAH granted the parties' joint request for mediation on September 8, 2023, and continued the hearing to October 17 through 19, 2023. Late in the afternoon on September 7, 2023, Student cancelled the September 8, 2023, mediation, stating that Student's independent educational evaluation had not been completed.

On October 3, 2023, Student filed a Request for Due Process Hearing in OAH case number 2023100123, Student's Case, naming Capistrano. OAH scheduled the hearing on Student's Case for November 21 and 22, 2023.

On October 6, 2023, OAH consolidated Capistrano's Case and Student's Case, designated Student's Case as primary, and vacated the dates in Capistrano's Case.

On November 8, 2023, OAH granted the parties' request for a December 15, 2023, mediation and a continuance of the hearing to February 13 through 15, 2024.

On December 15, 2023, Student cancelled the December 15, 2023, mediation, again claiming the independent educational evaluation had not been completed.

On January 30, 2024, Student filed a request to continue the due process hearing, again claiming that the independent educational evaluation has not been completed and Student's counsel was informed that the independent assessor had sustained an injury. On January 31, 2024, Capistrano Unified filed a notice of non-opposition.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;

- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The request is denied. All prehearing conference and due process hearing dates are confirmed and will proceed as calendared. Capistrano's Case has been pending for nearly eight months, since early June 2023, and Student's Case has been pending since October 3, 2023. The parties have had multiple opportunities to mediate the matter, but Student cancelled both mediations at the eleventh hour. The completion of the independent education evaluation has been pending since at least early September 2023. Student's motion fails to specify when the independent educational evaluation was first sought, give any estimate of time as to its anticipated completion, or indicate the length of the continuance sought. Student's vague reference to the assessor's alleged injury is inadequate to establish good cause for another continuance of this

consolidated matter given that the assessment has been pending for at least five months. No information is set forth anywhere in the motion establishing when this alleged injury occurred, the nature of the injury, when Student's counsel learned about it, who informed Student's counsel the assessor sustained an injury, or otherwise explained why it has delayed completion of the assessment pending for at least five months.

IT IS SO ORDERED.

Laurie Gorsline

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Administrative Law Judge

Office of Administrative Hearings