

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

CAPISTRANO UNIFIED SCHOOL DISTRICT,

v.

STUDENT.

OAH CASE NUMBER 2023090508

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE AND GRANTING
REQUEST FOR CONTINUANCE

JANUARY 26, 2024

On January 26, 2024, Administrative Law Judge Alexa Hohensee, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Daniel Harbottle appeared on behalf of Capistrano Unified School District, called Capistrano. Parents appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

At the PHC, Student moved to continue the PHC and due process hearing based on Parents' desire to retain legal counsel. Parent explained that based on recently discovered information, Parents decided to obtain representation and were in the process of retaining counsel. Capistrano did not object to the continuance.

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).)

Student's motion was not filed three business days prior to the PHC, but Parent satisfactorily explained that she had just received new information on which Parents had decided to retain an attorney instead of representing Student themselves. Parents' desire to retain counsel is an unanticipated change in the status of the case as a result of which the case is not ready for hearing. At the PHC, the parties presented mutually agreeable dates for the continued due process hearing. The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case will proceed as follows:

PREHEARING CONFERENCE will be held on March 8, 2024, at 1:00 PM.

All other prehearing matters will be addressed at the March 8, 2024 PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held March 19, through 21, 2024.

The hearing will be conducted via telephone or videoconference and will begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing will continue day to day at the discretion of the ALJ.

The parties must immediately notify all potential witnesses of the hearing dates, and must 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.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties must inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties must also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties must leave a voicemail message regarding the settlement at

(916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties must provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings