

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

CAPISTRANO UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023120742

ORDER GRANTING STUDENT'S REQUEST FOR
CONTINUANCE OF DUE PROCESS HEARING AND SETTING
SCHEDULE FOR UPLOADING OF EXHIBITS AND
DISCLOSURE OF WITNESS LISTS

APRIL 24, 2024

On December 20, 2023, Capistrano Unified School District, called Capistrano, filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Parent on behalf of Student. On January 3, 2024, the parties filed a joint request to schedule a mediation and continue hearing dates. OAH granted the parties' request and scheduled mediation for March 21, 2024, and continued the prehearing

conference to April 15, 2024, at 1:00 PM and the due process hearing to April 23, 24, and 25, 2024.

On January 24, 2024, OAH granted the parties' request to reschedule mediation. The parties participated in mediation on March 25, 2024, but did not resolve their dispute.

On April 15, 2024, Student filed a request for due process hearing in OAH case number 204040536 naming Capistrano and a request to consolidate Capistrano's and Student's cases. Student's request to consolidate was untimely because it was not filed three business days prior to the April 15, 2024 prehearing conference, called PHC.

On April 15, 2024, OAH held the PHC in Capistrano's case. The undersigned Administrative Law Judge, called an ALJ, informed the parties that Student's request to consolidate would be ruled on after Capistrano had an opportunity to respond to Student's motion to consolidate. On April 15, 2024, Capistrano filed a written opposition to Student's motion to consolidate.

OAH issued an order denying Student's motion to consolidate on April 17, 2024. On April 22, 2024, Student filed a motion to reconsider the order denying consolidation. On the same day, OAH issued an order denying Student's request for reconsideration.

STUDENT'S MOTION FOR CONTINUANCE

On April 23, 2024, at 1:49 AM Student filed a motion to continue the due process hearing. The motion was supported by a declaration under penalty of perjury by attorney Kathleen Loyer. Student's request to continue is based upon Loyer's recent health issues.

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. (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).)

The due process hearing was scheduled to start on April 23, 2024, at 9:30 AM. Loyer and Parent appeared on behalf of student. Attorneys Alefia Mithaiwala and Shiksha Patel appeared on behalf of Capistrano. Capistrano's Executive Director, Alternative Dispute Resolution and Compliance, Dr. Kathy Purcell, appeared on behalf of Capistrano. Loyer presented additional information regarding her medical condition and anticipated duration of its impact on her ability to adequately represent Student and Parent. The ALJ provided the parties an opportunity to discuss mutually agreeable alternate dates. Following these discussions, and based upon the parties' stipulation to their availability, the ALJ granted Student's request for a continuance and continued the due process hearing to June 4, 5, and 6, 2024.

Student demonstrated good cause for a continuance of the due process hearing based upon Student's attorney's illness and upcoming medical treatments. Student's request for continuance is granted. The case will proceed as follows:

DUE PROCESS HEARING: June 4, 5, and 6, 2024.

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

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

No further continuances are contemplated, including for medical reasons. Student's attorney will have had more than adequate time to determine her fitness to competently represent Student, associate counsel to assist with the hearing, or withdraw and assist Student with obtaining new counsel for the continued hearing dates as this continuance affords Student and Student's attorney six weeks to prepare.

SCHEDULE FOR STUDENT'S UPLOADING OF EXHIBITS AND DISCLOSURE OF WITNESS LISTS

Student requested permission to upload exhibits into Case Center. Student further requested permission to identify three witnesses not included in the parties' joint witness schedule dated April 21, 2024. Capistrano objected to Student's requests because Student did not serve his exhibits and a list of all witnesses and their general areas of testimony at least five business days before the hearing as required by Education Code section 56505, subdivision (e)(7) and as ordered in the April 15, 2024 Order Following PHC.

In view of the continuance of this matter and the lack of prejudice to Capistrano, Student is ordered to upload his exhibits into Case Center and serve Capistrano's attorneys of record with Student's witness list, which shall include the witnesses' general areas of testimony, within 10 business days of the date of this Order. Student shall notify Capistrano's attorneys of record in writing immediately upon uploading of exhibits into Case Center. Capistrano shall have five business days from receipt of notice from Student for Capistrano to upload any additional documents necessitated by a review of Student's exhibits. The parties are ordered to meet and confer no later than May 31, 2024, by 5:00 PM concerning any disputes about the newly uploaded documents or Student's proposed witnesses. The ALJ will resolve any disputes about the documents and witnesses at the due process hearing.

As part of the meet and confer process, the parties are also ordered to meet and confer no later than May 31, 2024, by 5:00 PM to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties stipulated on the record that the Joint Stipulation of Facts for Due Process Hearing signed by the parties on April 22, 2024 shall remain in effect through the continued due process hearing.

Capistrano shall inform Student which proposed witnesses are Capistrano's employees. Capistrano shall also identify the witnesses on Student's list that require a subpoena. Capistrano may agree to accept service for a witness under Capistrano's control or provide Student with the witness's most recent contact information.

Capistrano advised the ALJ that some of its proposed witnesses are expected to be out of town or may not be available during the June 4, 5, and 6, 2024 hearing dates due to preplanned summer vacations. In the event Capistrano's witnesses are not available, the due process hearing will begin with available witnesses and then be continued, as reasonably necessary, to permit Capistrano's witnesses to testify.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received 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. If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

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

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings