

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024100588

OAH CASE NUMBER 2024060521

ORDER FOLLOWING PREHEARING CONFERENCE,
GRANTING MOTION TO CONSOLIDATE, DENYING
MOTION TO CONTINUE, AND GRANTING REQUEST TO
MEDIATE

OCTOBER 21, 2024

On October 18, 2024, Administrative Law Judge Linda Dowd, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge is called an ALJ. The prehearing conference is called a PHC. Attorney Jennifer Fant appeared on behalf of Capistrano Unified School District. Parent appeared

on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

CONSOLIDATION

On June 12, 2024, Capistrano Unified filed with OAH a request for due process hearing, called a complaint, in OAH case number 2024060521, Capistrano Unified's Case, naming Student. On October 17, 2024, Student filed a complaint in OAH case number 2024100588, Student's Case, naming Capistrano Unified. Student filed a motion to consolidate Capistrano Unified's case with Student's Case on October 17, 2024. Capistrano Unified opposed consolidation because it did not want to further delay the hearing in Capistrano Unified's Case, and argued Student's issue was not ripe.

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, both cases involve a common question of law or fact, specifically, Capistrano Unified's right to assess Student, and Student's allegation that Parents have been requesting independent educational evaluations in lieu of district assessments. In addition, consolidation furthers the interests of judicial economy because many of the same witnesses and much of the same evidence will be presented during both hearings. Accordingly, consolidation is granted. Student's Case, OAH case number 2024100588, is designated the primary case. All dates previously set in Capistrano Unified's Case, OAH

case number 2024060521 are vacated. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in Student's Case, OAH case number 2024100588.

CONTINUANCE

On October 17, 2024, Student requested a second continuance in Capistrano Unified's Case to January 14, 15, and 16, 2025. Student alleged he requested records from Capistrano Unified on September 19, 2024, but Capistrano Unified failed to timely produce the records. Capistrano Unified opposed Student's request.

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).)

Student did not establish good cause to continue the due process hearing. Student's motion to consolidate was granted, giving Student an additional four weeks to review records. Additionally, Capistrano Unified's Case has been pending since June 13, 2024, and Student did not provide any explanation as to why Parents waited three months to request records. Therefore, the request is denied. All previously scheduled dates are confirmed.

MEDIATION DATE

Student's request for due process included a request to mediate. During the PHC, Capistrano Unified requested the parties schedule a mediation date. The request for mediation is granted.

MEDIATION DATE is November 5, 2024, 9:00 AM to 12:30 PM.

MEDIATION will occur via telephone or videoconference.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall 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 shall 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 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.

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 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.

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.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings