BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT,	OAH Case No. 2019020637
CAPISTRANO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019011184 ORDER FOLLOWING PREHEARING CONFERENCE GRANTING CAPISTRANO'S REQUEST FOR CONTINUANCE OF THE PREHEARING CONFERENCE AND HEARING DATES

On April 8, 2019, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Parent appeared on behalf of Student. Daniel Harbottle, Attorney at Law, appeared on behalf of Capistrano Unified School District. The PHC was recorded.

On March 4, 2019, Capistrano submitted a Motion to Continue the prehearing conference and due process hearing dates. Capistrano's Motion was based upon the unavailability of their attorney, Alefia Mithaiwala, who had been representing it in this case, combined with the unavailability of Capistrano's Executive Director, Dr. Kathy Purcell, to prepare for and appear at hearing. On March 8, 2019, Student filed an Opposition to Capistrano's Motion challenging the necessity of either individual in order to begin the hearing as scheduled. In her Opposition, Student also raised, for the first time an objection to the issuance and scope of Capistrano's hearing subpoenas.

Based upon discussion with the parties on the record, the ALJ issues the following order:

1. Motion for Continuance. Capistrano moved to continue the PHC and due process hearing from the initial date set for hearing in this matter.

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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Capistrano's request is granted for good cause shown due to the unavailability of both its chosen attorney and a primary decision maker and hearing witness. All dates are vacated. As a consequence of the vacating of the hearing dates, the issue regarding subpoenas issued by Capistrano to have documents produced at hearing, and Student's objection thereto, is moot. This matter will be set as follows:

Prehearing Conference:	May 6, 2019, at 1:00 p.m.
Due Process Hearing:	May 14, 15, and 16, 2019, and continuing day to day as needed, at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 a.m., the first day and at 9:00 a.m. all other days unless otherwise ordered.

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, as applicable.

2. Location and Certification of Accessibility. The hearing shall take place at the Capistrano offices located at 33122 Valle Road, San Juan Capistrano, California, 92675.

As ordered in the scheduling order, the named local educational agency was to certify that it would provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing

accessibility of government facilities to persons with disabilities. The named local educational agency has certified that it will provide a facility that complies with the law for this hearing.

3. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. 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. THE PARTIES SHOULD SIMULTANEOUSLY **EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT** https://www.dgsapps.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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the parties settle the matter subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. OAH will not cancel the hearing dates without this information.

4. All other PHC matters will be addressed at the PHC on Monday, May 6, 2019, at 1:00 p.m.

IT IS SO ORDERED.

DATE: April 08, 2019

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings