

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2008110306

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
TRIAL SETTING CONFERENCE

This matter was scheduled for hearing on February 17 through 20, 2009, in San Juan Capistrano. The order following prehearing conference, dated February 6, 2009, ordered the parties to contact the Office of Administrative Hearings' (OAH) settlement line if a full and complete settlement was reached after 5:00 PM the day prior to the hearing. Neither party left a message on the settlement line.

OAH received a letter from Richard J. Soto, attorney for Capistrano Unified School District (District), via facsimile after 5:00 PM on February 13, 2009, the last business day prior to the hearing. Mr. Soto stated that the parties "have reached a settlement in principle . . . [and] are preparing a written agreement to finalize the settlement. . . . the parties . . . will be filing a joint stipulation and motion to continue the due process hearings [sic]" Because this letter was received after the office was closed, the Administrative Law Judge (ALJ) conducting the hearing was not aware of a pending settlement.

When ALJ Deidre Johnson arrived after traveling from Sacramento to conduct the hearing on February 17, 2009, the District informed her that the parties had settled the matter. The attorneys for the parties were not present. District staff gave ALJ Johnson a copy of a joint stipulation and motion to continue due process hearing signed by the parties on February 17, 2009. OAH has received nothing further regarding the status of this case.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

The request has been reviewed by OAH. The parties neither properly requested, nor received a continuance prior to the day of hearing. Matters set for hearing must go forward on the date scheduled, unless good cause is found for a continuance. A joint stipulation on

the eve of hearing may not be good cause to continue the matter. The PHC Order indicated that the parties should call the after-hours settlement line in addition to sending in a notice of settlement. Had the parties followed the PHC Order, ALJ Johnson could have avoided the expense and time to travel to the hearing. Furthermore, the parties have not sent in a final copy of a settlement agreement or otherwise contacted OAH to provide a status in this matter.

Nevertheless, without condoning the manner in which the parties handled the request for a continuance, good cause is found and the request is:

Granted. All dates are vacated. This matter will be set for the following date and time:

Trial Setting Conference: March 2, 2009, at 2:30 PM

Dated: February 25, 2009

/s/

JUDITH A. A. KOPEC
Administrative Law Judge
Office of Administrative Hearings