

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. 2015110501

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015120001

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING DATES

On December 18, 2015, Capistrano Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon unavailability of the District's representative and legal counsel. On December 22, 2015, Student opposed the request, asserting that District failed to establish unavailability and harm to Student if OAH grants District's request.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. District established good cause for a continuance in this matter based on preexisting hearings for matters filed before Student's case in which the District representative, Sara Young, will attend. While Student may suffer some hardship due to the continuance, students in the other cases may also if their cases are continued to accommodate Student. Therefore, this matter will be set as follows:¹

Prehearing Conference:	February 22, 2016, at 10:00 AM
Due Process Hearing:	February 29, 2016, at 1:30 PM, March 1 – 3, 2016, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. This matter is assigned to Administrative Law Judge Darrell Lepkowsky.

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.

IT IS SO ORDERED.

DATE: December 22, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ District requested a mediation date on February 4, 2016. However, Student has not agreed to participate in mediation on that date and mediation is a voluntary process. If the parties subsequently agree on a mediation date, they may submit their request to OAH.