

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

WALNUT CREEK ELEMENTARY  
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011040248

ORDER GRANTING REQUEST FOR  
CONTINUANCE AND SETTING  
PREHEARING CONFERENCE AND  
DUE PROCESS HEARING

This matter was filed on April 5, 2011, by the Walnut Creek Elementary School District (District). On April 22, 2011, the Office of Administrative Hearings (OAH) granted Student's request to continue the dates in this matter. On April 29, 2011, Student filed a second request to continue the dates on the grounds that Student needs time to retain representation, because on April 22, 2011, Student learned that District will be represented in the hearing in this matter.

On May 2, 2011, District filed an opposition to Student's second request for continuance. District contends that the April 22, 2011, order granting the continuance in this matter already delayed a rendering of the decision to June 6, 2011. If District prevails, it would leave District with just enough time to assess Student prior to District staff leaving on summer break on June 10, 2011. District opposes any further continuance because it would delay a possible assessment of Student until after the start of the 2011-2012 school year.

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)(3).) 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)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

OAH has reviewed the request for good cause and the request is granted. District has miscalculated the 45-day time line for a decision in this matter. The case was filed on April 5, 2011, and the first continuance was granted on April 22, 2011. Therefore, 17 days of the time line had been used by the time of the first continuance, leaving 28 days for the rendering of a decision. The continuance tolls the running of the time line. The matter is currently set

for hearing on May 17, 2011. Assuming the hearing took only one day and no continuances for closing arguments were requested, 28 days from May 17 would place the decision due date at June 13, 2011. Even if Student's request was denied, and District prevailed at hearing, District would not be able to assess Student prior to its summer break. Accordingly, the continuance is granted and this matter is set as follows.

Mediation:	May 3, 2011, at 9:30 AM <sup>1</sup> .
Prehearing Conference:	June 1, 2011, at 10:00 AM <sup>2</sup>
Due Process Hearing:	June 7, 2011, at 9:30 AM

IT IS SO ORDERED.

Dated: May 2, 2011

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> This matter is currently set for mediation on May 3, 2011. Because both parties have confirmed that they plan to attend mediation on May 3, 2011, the mediation date has not being continued.

<sup>2</sup> District did not propose any dates, should the continuance be granted. Therefore, Student's requested dates for prehearing conference and due process hearing are granted.