BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018090934
v.	ORDER GRANTING DISTRICT'S MOTION FOR CONTINUANCE OF HEARING FOR FILING OF CLOSING BRIEFS
SOUTHERN KERN SCHOOL DISTRICT.	

On April 18. 2019, the hearing in this matter was continued to May 13, 2019, at which time the parties were to file their closing briefs and the matter would be submitted for decision. On May 7, 2019, Southern Kern Unified School District filed a motion, requesting that the time for filing the closing briefs be continued to no earlier than June 7, 2019. In response, Student's Mother believed there had been sufficient time to file the closing briefs by May 13, 2019.

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).)

Southern Kern's motion was supported by convincing evidence that attorney Darren Bogié, the attorney that conducted the hearing and was responsible for the closing brief, was unable to complete the brief by the due date due to unforeseen and unavoidable circumstances. No other attorney at Mr. Bogié's firm participated in the hearing or could produce the final brief by May 13, 2019. Southern Kern has requested a hearing transcript to assist in the briefing, since Mr. Bogie was the only attorney to appear on its behalf during the hearing.

A party is entitled to make final argument in a closing brief before a matter is submitted for decision. Here, Southern Kern has demonstrated that its ability to prepare, file, and serve a closing brief by May 13, 2019, has been seriously impaired because of unforeseen circumstances. Good cause exits for the requested continuance.

ORDER

1. Southern Kern Unified School District's motion for continuance of the hearing for the filing of closing briefs is granted.

2. This matter is continued to the close of business, Monday, June 10, 2019, at which time the parties are to file their closing briefs and the matter will be submitted for decision.

DATE: May 08, 2019

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings