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 SECOND 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. On May 8, 2019, OAH granted Southern Kern's request for good cause and continued the hearing to June 10, 2019 for the filing of the closing briefs. Late on the afternoon of June 6, 2019, Southern Kern filed a second request for continuance to extend the time to file closing briefs.

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 first request was granted for good cause because, for a number of reasons, 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. Bogié 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. OAH granted Southern Kern's May 7, 2019 request and provided a four-week extension to file its final brief before submission for decision.

Southern Kern's June 6, 2019 continuance request stated that its attorney, who appeared at the hearing, had been anticipated to return to his law firm to complete the briefing by the extended time limit. However, as stated by the general counsel of the law firm, the attorney had not yet returned and the date of return was uncertain. Southern Kern's attorneys ordered and received the transcript of the entire eight-day hearing, attorney Stephanie Gutcher was reviewing the transcript, and Ms. Gutcher will prepare the final brief.

Southern Kern demonstrated that its ability to prepare, file, and serve a closing brief has been seriously impaired. However, no further extensions to file the final brief shall be granted. Though unexpected circumstances have impeded Southern Kern's counsel from efficiently completing the final briefing, a six-week extension of time is more than sufficient. The parties may file closing briefs no later than 5:00 PM on June 24, 2019.

ORDER

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

2. This matter is continued to the close of business, Monday, June 24, 2019, at which time the matter will be submitted for decision.

DATE: June 07, 2019

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings