BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CAPISTRANO UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018120555 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER FOR NO SANCTIONS; ORDER GRANTING MOTION TO AMEND

On January 4, 2019, a telephonic prehearing conference was held before Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings. Melissa Hatch, Attorney at Law, appeared on behalf of Capistrano Unified School District. Tony Nguyen, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Order to Show Cause. On December 31, 2018, Student and Capistrano failed to appear for a telephonic prehearing conference. In addition, parties failed to file prehearing conference statements. OAH rescheduled the prehearing conference and ordered the parties to appear to show good cause as to why they should not be sanctioned for failing to file a prehearing conference statement and failing to appear for the telephonic prehearing conference.

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) A party may be order to pay expenses of a party, or OAH as a result of "bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. . . . " (Cal. Code Regs. tit. 5, § 3088, subd. (a).) A party may also be ordered to pay costs for failure or refusal, without substantial justification, to comply with an order of the presiding officer. (Govt. Code § 11455.10.) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Ms. Hatch accepted full responsibility for her failure to appear for the December 31, 2018 PHC, explaining she was out of the office, had no support staff, and neglected to provide OAH with a number to reach her that day. Ms. Hatch sincerely apologized for the oversight.

Mr. Nguyen was retained by Parents following the December 31, 2018 PHC and he explained that Parents were unclear as to the nature and purpose of a PHC and their responsibilities.

The parties took full responsibility for their failure to appear on December 31, 2018 PHC, and their oversight was inadvertent. Accordingly, OAH will not sanction the parties for their failure to appear telephonically for the December 31, 2018 PHC.

2. Motion to Amend Complaint. On December 12, 2018, Capistrano filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings. On December 27, 2018, Capistrano filed a Motion to Amend the Due Process Hearing Request (amended complaint). At the PHC, Student did not object to the motion.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

DATE: January 4, 2019

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings