BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010652

ORDER OF CASE REASSIGNMENT AND SHOW CAUSE REGARDING FAILURE TO COMPLY WITH PHC ORDER

APRIL 19, 2021

On January 25, 2021, Student filed a request for due process hearing, complaint, naming Gilroy Unified School District. The Office of Administrative Hearings, referred to as OAH, granted Gilroy's continuance request on March 8, 2020, setting the hearing to commence on April 20 through 22, 2021, with a Prehearing Conference, referred to as PHC, on April 9, 2021. OAH convened the PHC on April 9, 2021, and the April 12, 2021 PHC Order summarized what the parties discussed at the PHC.

APPLICABLE LAW

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).)

DISCUSSION

The PHC Order explicitly informed the parties that "[e]lectronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically." To date, neither party has complied with this provision of the PHC Order.

Therefore, Student and Gilroy are ordered to show cause why Student's attorney, Joshua Cruz, and Gilroy's attorney, Jeffrey Maisen, should not be required to pay OAH's costs as to any possible delay to the hearing scheduled to commence on April 20, 2021, which Administrative Law Judge hearing preparation time and delays in the commencement of the hearing, caused by the parties' failure to timely load their

proposed exhibits. Student and Gilroy are ordered to file a written response with OAH by no later than 5:00 PM on April 19, 2021. A copy of the response shall be served upon the opposing party. The Order to Show Cause will be discussed at the commencement of the hearing on April 20, 2021, with a written order to follow. Failure of Student's and/or Gilroy's representative to appear telephonically at the order to show cause hearing on April 20, 2021, may result in additional sanctions.

ORDER

1. Hearing is now assigned to Administrative Law Judge Sabrina Kong.
2. An Order to Show Cause as to Why Student and/or Gilroy Should be Ordered to Pay Expenses is hereby issued. Student and Gilroy must file a response no later than 5:00 PM on Monday, April 19, 2021.
3. A telephonic order to show cause hearing shall be convened at 9:30 AM on Tuesday, April 20, 2021.

IT IS SO ORDERED.

Peter Paul Castillo

Peter Paul Castillo
Presiding Administrative Law Judge
Office of Administrative Hearings