BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019040597
v.	ORDER TO SHOW CAUSE
SONOMA VALLEY UNIFIED SCHOOL DISTRICT, MT. DIABLO UNIFIED SCHOOL DISTRICT.	

On April 12, 2019, Student filed a due process hearing request naming Sonoma Valley Unified School District and Mt. Diablo Unified School District as respondents. Student's complaint raised both expedited and non-expedited legal issues and the matter was scheduled accordingly. On April 15, 2019, the Office of Administrative Hearings issued a scheduling order setting the expedited mediation for April 25, 2019, in Sonoma, California, commencing at 9:30 a.m. Included in the scheduling order was the statement, "**OAH STRONGLY ENCOURAGES MEDIATION AND THE PROCESS IS DESCRIBED IN THE ATTACHED INFORMATION PACKET.** Please thoroughly read the attached packet, which describes your rights and responsibilities in each step of your case. For questions related to your case you may contact Aleecia Alvarado at (916) 263-0628." (emphasis in original) Ms. Alvarado is the case manager assigned to this matter.

The attached information packet states in relevant part, "**If the parties wish to cancel a scheduled mediation a day-prior, the parties MUST contact their case manager via phone and submit their request in writing."** (emphasis in original). OAH also maintains an after-hours settlement telephone line. Regarding that line, the information packet states, "**If the parties reach settlement and finalize an agreement after hours or need to cancel a mediation at the last minute** (Monday through Friday between 5:00 p.m. and 8:00 a.m. or on Saturday or Sunday) they may contact OAH at (916) 274-6035 and leave a message that settlement has been reached or the mediation needs to be cancelled and that an ALJ will not need to attend the hearing or mediation." (emphasis in original).

At approximately 2:44 p.m., on Wednesday, April 24, 2019, the day prior to the scheduled mediation, a representative from Student's attorney's office called the after-hours settlement line and left a voicemail message requesting to cancel the mediation. Ms. Alvarado did not receive any telephone calls, voicemail messages, or written request to cancel the mediation from any party.

The assigned mediator left Sacramento before dawn on April 25, 2019, for Sonoma to conduct the mediation. At approximately 7:30 a.m., on April 25, 2019, the after-hours settlement line was checked and the message left the prior afternoon was retrieved. The mediator was then notified and returned to Sacramento.

APPLICABLE LAW

In certain circumstances, an ALJ 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 v. Manhattan Beach Unified Sch. Dist*. (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly [Cal. Code Regs., tit. 5] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

With prior approval from the General Counsel of the California Department of Education, an ALJ may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to 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, subds. (a) & (e); see Gov. Cod 11455.30, subd. (a).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov.Code,§ 11455.30, subd. (a); Code Civ. Proc.,§ 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

All counsel in this matter are experienced practitioners who frequently appear before OAH. They are familiar with the appropriate manner in which to cancel mediation so as not to incur unnecessary expense. Additionally, even had counsel be inexperienced, the scheduling order and attached information packet provide clear instruction on how to cancel a mediation. The after-hours settlement line is to be used *only* for matters arising between 5:00 p.m. and 8:00 a.m. the following morning. At no time did any of the three parties involved contact the case manager or submit a written request to cancel the mediation. Accordingly, the mediator commenced travel to Sonoma. This failure resulted in OAH incurring unnecessary expense.

Accordingly, the parties are Ordered to Show Cause why the expense incurred by OAH for their failure to utilize the cancellation process outlined in the scheduling order and attached information packet should not be shifted to the parties. The parties' written responses to this Order to Show Cause shall be submitted to OAH no later than Wednesday, May 1, 2019, by 5:00 p.m.

IT IS SO ORDERED

DATE: April 25, 2019

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Joy Redmon
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JOY REDMON
Presiding Administrative Law Judge
Office of Administrative Hearings