BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016051141 ORDER TO SHOW CAUSE WHY PARTIES SHOULD NOT BE ORDERED TO PAY EXPENSES

On May 17, 2016, Student filed a request for a due process hearing with the Office of Administrative Hearings naming Los Angeles Unified School District. On June 29, 2016, OAH granted the parties joint request for a continuance, setting the mediation for 9:00 a.m., on July 28, 2016. On July 20, 2016, OAH contacted both parties to confirm the mediation, which District did.

On July 29, 2016, the assigned mediator traveled to the District's office, and upon her arrival was informed by the District representative that District and Student's counsel, Tamiel Holloway, had spoken and agreed to postpone the mediation until 10:30 a.m., because Ms. Holloway had a morning court appointment, and then work through lunch to complete the mediation due to the late start. The parties did not contact OAH before the scheduled start time to obtain approval to change the mediation time. Ms. Holloway appeared before 10:30 a.m., but the mediation did not commence as Student's Parent did not appear and could not be reached by telephone.

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).)

ORDER TO SHOW CAUSE

The District's and Student's representative agreed to change the mediation start time, but did not contact OAH for approval to change the time of the mediation, which did not occur. Therefore, District and Student are ordered to show cause why District and Student should not be required to pay OAH's costs as to the July 28, 2016 mediation, which includes OAH travel expenses related to the mediation. **District and Student are ordered to file a written response with OAH by no later than 5:00 p.m. on August 3, 2016,** by facsimile transmission to (916) 376-6319. A copy of the response shall be served upon the other party.

District's and Student's responses shall address why District and Student did not contact OAH to inform OAH of the parties' request to change the mediation start time or why the mediation was not rescheduled due to Ms. Holloway's court appearance. **District's and Student's written responses shall address why OAH should not order District and/or Student to pay OAH's expenses for sending a mediator to the scheduled July 28, 2016 mediation and OAH travel expenses related to this mediation, and for this order to show cause.**

The order to show cause hearing shall take place telephonically on August 5, 2016, at 11:00 a.m. Failure of District's or Student's representative to appear telephonically at the order to show cause hearing on August 5, 2016, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Parties Should Not be Ordered to Pay Expenses is hereby issued. District and Student must file a response no later than 5:00 p.m. on Wednesday, August 3, 2015.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, August 15, 2016.

DATE: July 29, 2016

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings