BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013060210
v.	ORDER TO SHOW CAUSE AS TO WHY STUDENT SHOULD NOT PAY EXPENSES FOR FAILURE TO APPEAR AT THE PREHEARING CONFERENCE; AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING
PLACER HILLS UNION SCHOOL DISTRICT.	

On August 30, 2013, a telephonic prehearing conference (PHC) was scheduled to occur at 10:00 a.m. before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). The PHC was scheduled by OAH on July 8, 2013, in response to a joint request by the parties to continue the PHC and due process hearing in this matter.

On August 29, 2013, Student's advocate, Robert Closson, Ed.D., notified OAH as to the telephone number where he could be reached for the scheduled PHC. The ALJ telephoned that number at 10:00 a.m., on August 30, 2013, and the telephone was answered by voicemail. The ALJ left a message that she would be convening the PHC at 10:15 a.m., since the advocate did not appear to be answering his telephone.

Between 10:15 and 10:20 a.m., the ALJ again attempted to reach the advocate by telephone and left a message that the PHC would begin at 11:00 a.m., with or without the advocate, on the voicemail connected to the telephone number where the advocate had told OAH he could be reached. In addition, finding another telephone number for the advocate in pleadings he filed on Student's behalf, the ALJ also called that number, but since the voice mailbox for that number was full, no message could be left for the advocate at that telephone number. At 11:00 a.m., the ALJ again tried to telephone the advocate at both numbers, but both telephone numbers were answered by voicemail.

At 11:00 a.m. on August 30, 2013, the PHC was convened with only the attorney for Placer Hills Union School District (District). David Girard appeared on behalf of the District. There was no representative for Student.[1]

[1] When the advocate informed OAH of his telephone number on August 29, 2013, he also provided a telephone number for Student's father (Father). However, since Student was

At approximately 11:10 a.m., on August 30, 2013, the advocate telephoned OAH and left a message that the PHC be rescheduled so that he could appear. However, the ALJ did not receive word of this call until after the conclusion of the PHC at approximately 11:30 a.m. Furthermore, Student's advocate did not file a motion to reschedule the PHC until after 4:00 p.m. on September 3, 2013. This motion gave no explanation as to why the advocate failed to appear at the PHC, nor any other reason for requesting a continuance of all currently scheduled proceedings in this matter. The District has responded to this motion, and the motion will be ruled upon in a separate order.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA), a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing.

Under certain circumstances, an ALJ 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 ordered 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

When a party files a complaint pursuant to the IDEA, that party has a duty to prosecute the case which includes disclosing his/her witnesses and documentary exhibits and otherwise prepare for hearing by attending the mandatory prehearing conference. Student's unilateral election to not participate in the PHC at the time it was scheduled, is disruptive of

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represented by the advocate, it would have been inappropriate to contact Father without the advocate being present.

the OAH hearing process and resulted in OAH incurring costs for the ALJ's preparation and conduct of the PHC without Student's participation, as well as preparation of this Order.[2]

Student is ordered to show cause why Student's advocate, Robert Closson, should not be required to pay OAH's costs for failing to participate in the PHC on August 30, 2013. **Student's advocate, Robert Closson is ordered to file a written response with OAH by no later than close of business on September 6, 2013,** by facsimile transmission to (916) 376-6319. A copy of the response shall be served upon the District by facsimile. The District is not expected to file a written response.

Student's response shall address why his representative did not appear for the PHC on August 30, 2013. **Student's written response shall address why OAH should not order Student to pay OAH's expenses for the August 30, 2013, PHC and for this order to show cause.**

The order to show cause hearing shall take place telephonically on September 9, 2013, at 3:00 p.m. Failure of Student's representative, Robert Closson to appear telephonically at the PHC on September 9, 2013, may result in additional sanctions.

Should Student's representative, Robert Closson fail, without excuse, to timely file a response as ordered above, or participate in the telephonic order to show cause conference, OAH may take further action, such as filing an order to show cause why the case should not be dismissed or additional sanctions imposed against Robert Closson. Dismissal of Dr. Closson as Student's advocate/representative does not relieve Dr. Closson of his responsibilities pursuant to this order to show cause hearing.

FURTHER PROCEEDINGS

On August 30, 2013, the ALJ informed the attorney for the District that she had reordered and reworded the issues in Student's complaint for clarity, and to conform with the wording of applicable California and federal statutes and regulations. Student's representative/advocate and the District's attorney should be prepared, following the order to show cause hearing, to discuss the following proposed wording for the issues:

a) Did the District deny Student a free appropriate public education (FAPE) by failing to assess him in all suspected areas of disability from May 29, 2011 to the present, specifically in the areas of hearing loss and attention deficit hyperactivity disorder (ADHD)?

b) Did the District deny Student a FAPE by failing to meet all legal requirements for the assessments it did conduct?

[2] With the exception of the section of this Order entitled "Further Proceedings," all references to Student refer to his representative/advocate, Robert Closson.

c) Did the District commit procedural violations by predetermining Student's individualized education program (IEP) at the IEP team meetings since May 30, 2011. thus significantly impeding Parents' right to meaningfully participate in the IEP process?[3]

d) Did the District commit a procedural violation by failing to consider Parents' input at IEP team meetings thus significantly impeding their right to meaningfully participate in the IEP process?

e) Did the District commit a procedural violation by failing to have all required personnel at the IEP team meetings occurring since May 30, 2011, thus significantly impeding Parents' right to meaningfully participate in the IEP process ?

f) Did the District commit a procedural violation by failing to provide Parents with prior written notice as to why the District was denying Student services requested by Parents, thus significantly impeding their right to meaningfully participate in the IEP process?

g) Did the District commit a procedural violation that denied Student a FAPE, and/or significantly impeded Parents' right to meaningfully participate in the IEP process by failing to adequately describe his present levels of performance in his IEP?

h) Did the District commit a procedural violation that denied Student a FAPE, and/or significantly impeded Parents' right to meaningfully participate in the IEP process by failing to adequately describe the supports and services contained in Student's IEP?

i) Did the District deny Student a FAPE by failing to provide him with adequate services and supports in his IEP and in the classroom, including but not limited to:

1) Physical therapy, occupational therapy and adaptive physical education to address timing of motion, manual coordination, and sensory input as well as motor integration;

2) Specialized instruction in the areas of math, typing, essay composition (grammar and mechanics);

3) A one-to-one aide in the classroom;

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[3] Under California special education laws, a party must file a request for due process (complaint) no later than two years after the act or omission complained of has occurred unless certain exceptions apply that would toll this statute of limitations. (Ed. Code § 56505, subd. (l).) Student's complaint was filed with OAH on May 29, 2013. Although Student's complaint refers to events that occurred more than two years prior to the filing of his complaint, facts are not alleged in the complaint that, if proved at hearing, would support a tolling of the two-year statute of limitations.

4) Behavioral supports to address his ADHD;

5) Measurable annual goals in his IEP;

6) Personnel to provide all supports and services who were trained to work with students with hearing impairment;

7) Modifications and assistive technology to address his hearing impairment;

8) Counseling; and

9) Parent counseling and training?

j) Did the District deny Student a FAPE by failing to educate him in the least restrictive environment?

k) Did the District deny Student a FAPE by failing to implement his IEP/s?

l) Did the District deny Student a FAPE and/or significantly impede Parents from meaningfully participating in the IEP process by failing to provide Parents with progress reports as required in the IEP?

m) Did the District deny Student a FAPE by changing his eligibility category from hearing impaired to having specific learning disabilities?

Student's representative should also be prepared to discuss exhibits, witnesses, the need for telephonic testimony, the necessity for special accommodations, the location of the hearing, and his request to audio record the proceedings, as well as general rules of conduct for the due process hearing. **Due to the necessity of holding the order to show cause in this matter, the due process hearing currently set to begin on September 9, 2013, will be continued to September 30, 2013, at 1:30 p.m., and will continue thereafter, day-to-day, Monday through Thursday, from 9:00 a.m. to 5:00 p.m., or as otherwise ordered by the ALJ.**[4]

ORDER

1. An Order to Show Cause as to Order to Show Cause as to Why Student Should Not Pay Expenses for Failure to Appear at the PHC is hereby issued. Student's

[4] In her response to Student's latest request for a continuance, the District's attorney indicated that the dates of September 30 through October 3, 2013, were compatible with the District's current schedule.

advocate, Robert Closson must file a response no later than close of business on Friday, September 6, 2013.

2. A telephonic Order to Show Cause hearing shall be convened at 3:00 p.m. on Monday, September 9, 2013. Student's advocate, Robert Closson, shall appear for the Order to Show Cause hearing. A further PHC shall immediately follow this hearing.

3. The due process hearing in this matter is continued to September 30, 2013, at 1:30 p.m., and will continue thereafter, day-to-day, Monday through Thursday, from 9:00 a.m. to 5:00 p.m., or as otherwise ordered by the ALJ.

4. Failure to comply with this order may result in the issuance of an Order to Show Cause as to Why Student's Complaint Should Not Be Dismissed, and Why Student's Advocate, Robert Closson Shall Not Be Ordered to Pay Additional Costs Incurred by OAH in this Matter.

IT IS SO ORDERED.

Dated: September 4, 2013

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings