BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016040799
v.	ORDER VACATING HEARING DATES, SETTING STATUS CONFERENCE AND SETTING ORDER TO SHOW CAUSE
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On April 18, 2016, Student filed, with the Office of Administrative Hearings, a request for due process hearing against the Antioch Unified School District.[1] On August 3, 2016, Student filed his prehearing conference statement; and, on August 5, 2016, Antioch filed an amended prehearing conference statement. On August 8, 2016, Administrative Law Judge Charles Marson conducted a prehearing conference in this matter. Evan Goldsen, attorney at law, appeared for Student, and Matthew Juhl-Darlington, attorney at law, appeared for Antioch. The matter was set to begin hearing on August 16, 2016.

On August 12, 2016, OAH informed the parties that the hearing had been reassigned to ALJ Theresa Ravandi. On August 16, 2016, the parties appeared before ALJ Ravandi for the hearing. At that time ALJ Ravandi informed the parties that she had reviewed the documents in the case and had noticed one of Student's exhibits, listed in Student's prehearing conference statement, was a letter from three legal aide agencies to the "Superintendent and California Department of Education." ALJ Ravandi disclosed on the record that she was familiar with two of these agencies as she had worked for one of them early in her career, and her husband currently worked for another one of the agencies. The parties were allowed to respond to the disclosure.

After taking a break, Antioch moved for a peremptory challenge to ALJ Ravandi. The challenge was untimely and was denied. Antioch then moved for a recusal for cause, asserting that ALJ Ravandi's prior work history with the Disability Rights Education Defense Fund and her husband's current employment with Disability Rights California could make her biased in favor of Student, and would not provide a fair and impartial hearing for Antioch. Student opposed the request. It is of importance that all ALJ Ravandi knew about the exhibit was that it was a letter to the "Superintendent and the California Department of Education." She did not know the contents of the letter or whether it concerned Student. Neither party disclosed the contents of the letter at that time. Of further, and greater,

[1] Student's complaint was deemed filed on April 18, 2016, because it was received after 5:00 p.m., the close of business, on April 15, 2016.

importance is that ALJ Ravandi did not know the contents of any of the other exhibits the parties intended to submit, nor did either of the attorneys reveal the contents of the other exhibits in the case. Based upon this limited information, ALJ Ravandi did not find Antioch had met its burden for recusal and denied the request.

The first two days of hearing concluded on August 17, 2016, and the matter was continued to August 30, 2016, to reconvene for hearing. OAH does not permit parties to file their proposed evidence ahead of the hearing. The parties are required to bring their evidence to the hearing, with a copy for the ALJ presiding at the hearing. Following the adjournment of the hearing on February 17, 2016, ALJ Ravandi retained her copy of the evidence. During the recess of the hearing, ALJ Ravandi reviewed exhibits that had been marked and entered. It was then that she discovered, from the exhibits, that Disability Rights had actually represented Student as Student's counsel. The evidence covers a time period at issue in this case. Had either party or their attorneys revealed to ALJ Ravandi, following her disclosure, what the evidence actually contained, ALJ Ravandi would have recused herself on August 16, 2016, prior to the commencement of the hearing.

ALJ Ravandi will issue a separate notice recusing her from this case. All currently set hearing dates in this matter are vacated. OAH will set a status conference to set new dates in this matter. OAH will assign a new ALJ to hear this matter. The hearing will commence anew. OAH will shred the evidence in ALJ Ravandi's possession. The parties will submit new evidence binders to the ALJ who will hear this matter.

ORDER TO SHOW CAUSE

In 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."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With prior approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing 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. Code, § 11455.30, subd. (a).)

An ALJ presiding over a hearing without first obtaining approval from the California Department of Education, may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to

cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"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).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "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.)

In this case, at the commencement of the hearing on August 16, 2016, only the parties and their attorneys knew the contents of the evidence they intended to present. ALJ Ravandi had not reviewed any of the exhibits at the time she made her disclosure. Upon disclosure, the parties were on notice that ALJ Ravandi's husband worked for Disability Rights. Antioch made a motion for ALJ Ravandi to recuse herself, but it was on cursory grounds that she may be biased based upon a letter that did not appear to relate to Student. Accordingly, the request was denied. However, both parties, and their attorneys, knew or should have known that there were exhibits that would show that Disability Rights had represented Student. Had the parties revealed the relationship between Student and Disability Rights to ALJ Ravandi, she would have recused herself on August 16, 2016. Such a recusal would have saved all parties and OAH the time, expenses and resources of two days of hearing, which are now wasted due to ALJ Ravandi's recusal.

The parties are ordered to show cause why the parties or their counsel should not be ordered to pay OAH's costs for conducting a hearing on August 16 and 17, 2016; for ALJ Ravandi's time reviewing the evidence; for the costs of this order; for the costs of ALJ Ravandi's recusal notice; and all other costs OAH may incur in conducting the order to show cause hearing and issuing resulting orders. **The parties, or their representatives, are ordered to file a written response with OAH by no later than 12:00 p.m. on August 29, 2016**. The parties shall serve a copy of the response upon each other. Both responses shall address whether the attorneys for the parties knew the contents of the evidence and why they did not reveal what the evidence would establish to ALJ Ravandi on August 16, 2016.

A telephonic status conference and OSC hearing shall take place at 2:30 p.m. on Monday, August 29, 2016, before the undersigned. OAH shall initiate the telephone call to the parties. The parties shall be prepared to discuss the OSC and new dates for the rescheduled hearing. **Should the parties fail, without excuse, to timely file a response as ordered above, or participate in the telephonic status conference and OSC, OAH may take any appropriate actions without further notice.**

ORDER

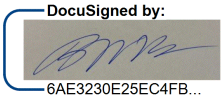
1. All currently set dates are vacated.

2. A Status Conference is set for August 29, 2016, at 2:30 p.m. to set new hearing dates.

3. An Order to Show Cause as to Why OAH Costs Should not be Shifted and the Parties Ordered to Pay Expenses is hereby issued. Parties must file a response statement no later than 12:00 p.m. on August 29, 2016.

4. An Order to Show Cause hearing will be held on August 29, 2016, at 2:30 p.m.

DATE: August 25, 2016



BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings