BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: CARLSBAD UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018020416
PARENT ON BEHALF OF STUDENT, v. CARLSBAD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018010287 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

On January 9, 2018, Student filed with the Office of Administrative Hearings request for a due process hearing naming Carlsbad Unified School District. On February 8, 2018, District filed with OAH a complaint naming Student. On February 20, 2018, OAH consolidated the two matters. On February 21, 2018, OAH granted the parties joint request for continuance, setting the mediation for 9:30 a.m., on March 7, 2018.

On March 7, 2018, the assigned mediator traveled to the District's office. The District's attorney and representative and Student's Parent were present at 9:30 a.m., for the mediation. Student's attorney, Paul Hefley, did not appear for the mediation. Mr. Hefley was contacted and stated that he did not realize that the mediation was scheduled for that day, and stated that he could make the mediation in a few hours. OAH subsequently canceled the mediation.

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

Student's attorney apparently did not calendar or forgot about the mediations date, which caused the assigned mediator to unnecessarily travel to the District's office. Therefore, Student is ordered to show cause why Student's attorney, Mr. Hefley, should not be required to pay OAH's costs as to the March 7, 2018 mediation, which includes OAH travel expenses related to the mediation. **Student is ordered to file a written response with OAH by no later than 5:00 p.m. on March 14, 2018**. A copy of the response shall be served upon District. District is not expected to file a written response.

Student's response shall address why Student's attorney did not appear at the mediation despite to agreeing to the mediation date in the continuance request. **Student's written response shall address why OAH should not order Student to pay OAH's expenses for sending a mediator to the scheduled March 7, 2018 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 March 19, 2018, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on March 19, 2018, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Student Should be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on Wednesday, March 14, 2018.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Monday, March 19, 2018.

DATE: March 7, 2018

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