BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FALLBROOK UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013100130 ORDER TO SHOW CAUSE WHY PARTY SHOULD NOT BE ORDERED TO PAY EXPENSES

A prehearing conference (PHC) was calendared in this matter for March 28, 2014, at 3:00 p.m., before Administrative Law Judge (ALJ) Paul H. Kamoroff, the undersigned. The ALJ convened the PHC, for which Sharon A. Watt, counsel for the Fallbrook Union High School District (Fallbrook), did not appear. The ALJ made several attempts to obtain Ms. Watt's participation in the teleconference for the PHC. On two separate occasions the undersigned was placed on hold by Ms. Watt's office. Ms. Watt did not appear and after the unsuccessful attempts, the undersigned informed Ms. Watt's office that the PHC would move forward. The PHC proceeded without Ms. Watt.

Subsequently, at 3:34 p.m., the Office of Administrative Hearings received, from Ms. Watt, a notice of peremptory challenge to the undersigned, on behalf of Fallbrook. The peremptory challenge was denied as being untimely by the Presiding ALJ. The PHC was duly noticed and properly convened. Fallbrook has provided no reason for the failure of its counsel to appear at the PHC, especially in light of her having filed a PHC statement on March 25, 2014.

ORDER TO SHOW CAUSE

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), 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.

Fallbrook is ordered to show cause why it, or its counsel of record, should not be ordered to pay OAH costs incurred in the preparation for and convening of a PHC for which its counsel failed to appear. Such conduct interferes with the parties' and OAH's ability to

timely advance this matter. **Fallbrook, or its representatives, is ordered to file a written response with OAH by not later than 5:00 p.m. on April 3, 2014,** by facsimile transmission to (916) 376-6319. Fallbrook shall serve a copy of the response upon Student's counsel by facsimile. Fallbrook's response shall address why its counsel, Ms. Watt, failed to appear for the PHC on March 28, 2014. Student is not required to, but may, file a response if he desires.

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."].) Only the ALJ presiding over the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) **Fallbrook's written responses shall address why OAH should not order it to pay OAH's expenses for the March 28, 2014 PHC.**

A telephonic hearing on this Order to Show Cause shall take place at 1:00 p.m. on Friday, April 4, 2014. OAH shall initiate the telephone call to the parties. **Should Fallbrook fail, without excuse, to timely file a response as ordered above, or participate in the telephonic hearing on April 4, 2014, OAH may rule upon the Order to Show Cause without further notice.**

ORDER

1. An Order to Show Cause as to why Fallbrook should not be ordered to pay expenses is hereby issued. Fallbrook must file a response no later than 5:00 p.m. on April 3, 2014.

2. A telephonic hearing is set for 1:00 p.m. on April 4, 2014.

DATE: April 1, 2014

/s/
PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings