BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018070743
v.	ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES RE MARGARET J. MCNAIR
COMPTON UNIFIED SCHOOL DISTRICT.	

On July 16, 2018, Student filed with the Office of Administrative Hearings a request for a due process hearing naming Compton Unified School District. On August 29, 2018, OAH granted the parties' joint request for continuance, setting a mediation for 9:30 a.m., on September 13, 2018.

On September 13, 2018, the assigned mediator traveled to the District's office. Student and Student's attorney, Lisa Shafii, did not appear for the mediation and did not answer the telephone, nor respond to voicemail messages left by the mediator at the telephone number on file. OAH subsequently canceled the mediation.

On September 13, 2018, the Office of Administrative Hearings issued an Order to Show Cause why Student's attorney, Lisa Shafii, should not pay OAH's costs related to the cancelation of the scheduled September 13, 2018, 9:30 a.m., mediation. The Order to Show Cause called for Student's attorney to submit a response to OAH by September 17, 2018. OAH received the response from Margaret J. McNair, co-counsel and managing attorney of Hope4Families: A Special Education Law Firm, on September 14, 2018.

In Ms. McNair's response, she documents medical issues that Ms. Shafii has recently had after the birth of her child. Therefore, OAH held that Ms. Shafii's failure to appear was due to her medical condition and excusable, and set aside the order to show cause on September 17, 2018. However, Ms. McNair's response failed to document why she as managing attorney and co-counsel did not know that Ms. Shafii might not appear at the mediation due to her medical condition.

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 is ordered to show cause why Student's attorney, Margaret J. McNair, should not be required to pay OAH's costs as to the September 13, 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 September 24, 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 asking for and 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 September 13, 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 September 28, 2018, at 2:00 p.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on September 28, 2018, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Student Should Not be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on Monday, September 24, 2018.

2. A telephonic order to show cause hearing shall be convened at 2:00 p.m. on Friday, September 28, 2018.

IT IS SO ORDERED.

DATE: September 17, 2018

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