BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FONTANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020010118

ORDER FOLLOWING PREHEARING CONFERENCE AND ORDER TO SHOW CAUSE AS TO WHY PARTIES SHOULD NOT PAY EXPENSES AND MATTER SHOULD NOT BE DISMISSED FOR INACTIVITY

MAY 18, 2020

On January 3, 2020, Student filed a request for due process hearing, naming Fontana Unified School District. On January 27, 2020, the parties filed a joint request for a continuance. The parties specifically requested a prehearing conference date of May 18, 2020, at 1:00 PM and a due process hearing to convene on May 27, 2020. On January 28, 2020, OAH granted the parties' request. On May 18, 2020, at 8:50 AM, Fontana filed a request to continue the prehearing conference because the parties had resolved this matter and were obtaining signatures to the agreement.

On May 18, 2020, a video prehearing conference, referred to as a PHC, was held before Administrative Law Judge Cararea Lucier, Office of Administrative Hearings. There was no appearance on behalf of Student, his Parents, or Fontana Unified School District. Student did not file a prehearing conference statement prior to the PHC. The PHC was recorded.

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).)

The ALJ issued the following order:

1. Prehearing Conference. The video PHC is continued to Friday, May 22, 2020, at 1:00 PM.
2. Continuance of Due Process Hearing. The hearing is continued to June 2, 2020, through June 4, 2020.
3. Order to Show Cause. Student is ordered to show cause at the video PHC on Friday, May 22, 2020, as to why this matter should not be dismissed for failure to participate, prosecute, or advance the matter. Student is

further ordered to file a prehearing conference statement by noon on Wednesday, May, 20, 2020, if the matter is not dismissed by then.

4. Fontana and Student are both ordered to show cause at the video PHC on Friday, May 22, 2020, as to why they should not be ordered to pay OAH's expenses for their respective failures to appear at the video PHC of May 18, 2020. Fontana and Student must file a response no later than 5:00 PM on Thursday, May 21, 2020.

IT IS SO ORDERED.

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Cararea Lucier
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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings