BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018070882
v.	ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE REQUIRED TO PAY EXPENSES
CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.	

On October 26, 2018, the undersigned ALJ held a telephonic prehearing conference in this matter. William Trejo, Attorney at Law, appeared on behalf of Student. Diane Willis, Attorney at Law, appeared on behalf of Chaffey Joint Union High School District. Mr. Trejo represented that the parties had settled the case and Student had signed the settlement agreement. Mr. Trejo requested that the PHC be rescheduled to allow all parties and representatives to sign the settlement agreement and so that Student could submit the necessary paperwork to OAH. The undersigned ALJ granted the request, rescheduled the PHC to November 2, 2018, at 10:00 a.m., and advised Mr. Trejo to get all paperwork in by 2:00 p.m. on Thursday, November 1, 2018.

On October 31, 2018, at 4:35 p.m., Student submitted a notice of settlement and request to vacate dates and set a status conference. However, Student's notice was dated August 28, 2018, and did not include the date of the board meeting or the signature page of the settlement agreement. OAH called Mr. Trejo's office on October 31, 2018, at 4:35 p.m., and spoke to his assistant and informed her that OAH would not vacate dates and set a status conference without knowing the date of the board meeting and that OAH needed the signature page of the settlement agreement.

OAH called Mr. Trejo's office on November 2, 2018, at 9:30 a.m., again informing his assistant that OAH had not received the necessary paperwork to vacate the dates and set a status conference. OAH trailed the rescheduled PHC to 11:00 a.m. on November 2, 2018, however, informed Mr. Trejo's assistant that the PHC would be convened if OAH did not receive the necessary paperwork. OAH notified Chaffey of the same information.

At 10:13 a.m. on November 2, 2018, Chaffey submitted a notice of settlement and request to vacate dates and set a status conference. Chaffey included the date of the board meeting and the signature page of the settlement agreement, which showed that last signatures to the agreement were obtained on October 30, 2018.

APPLICABLE LAW

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).)

"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).) "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.)

ORDER TO SHOW CAUSE

Student is ordered to show cause why Student's attorney, William Trejo, should not be required to pay OAH's costs preparing for the rescheduled PHC. **Student is ordered to file a written response with OAH by no later than 5:00 p.m. on November 9, 2018**. A copy of the response shall be served upon Chaffey. Chaffey is not expected to file a written response.

Student's response shall address why Student's attorney did not submit the appropriate paperwork to vacate dates and set a status conference despite being notified immediately after filing that the notice was incorrect and incomplete. **Student's written response shall address why OAH should not order Student to pay OAH's expenses in preparing for the rescheduled PHC.**

The order to show cause hearing shall take place telephonically on November 16, 2018, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on November 16, 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 Friday, November 9, 2018.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, November 16, 2018.

DATE: November 2, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings