BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

HUENEME ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2019101218

ORDER TO SHOW CAUSE AS TO WHY STUDENT'S ATTORNEY SHOULD NOT BE ORDERED TO PAY EXPENSES

FEBRUARY 11, 2020

On October 30, 2019, Student filed with the Office of Administrative Hearings, known as OAH, a request for a due process hearing naming Hueneme Elementary School District. On November 27, 2019, OAH granted the parties' joint continuance request, setting the mediation for Monday, February 10, 2020.

On February 10, 2020, the assigned mediator and interpreter traveled to the Hueneme Elementary School District's office. Hueneme Elementary School District informed the mediator upon her arrival that the office of Student's attorney informed Hueneme Elementary School District on Friday, February 7, 2020, that it was cancelling 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).)

DISCUSSION

Student's attorney, Janeen Steel, informed Hueneme Elementary School District of the cancellation on February 7, 2020, but OAH has no record of receiving notice of the cancelled mediation. The failure to cancel the mediation caused the mediator to unnecessarily travel to Hueneme Elementary School District's offices. Therefore, Student is ordered to show cause why Student's attorney, Janeen Steel, should not be required to pay OAH's costs as to the February 10, 2020 mediation, which includes OAH travel expenses and retaining an interpreter related to the mediation. Student is ordered to file a written response with OAH by no later than 5:00 PM on February 18, 2020. A copy of the response shall be served upon the opposing party.

Student's response shall address why Student's attorney did not properly inform OAH of the cancelled mediation. Student's written response shall address why OAH should not order Student's attorney to pay OAH's expenses for sending a mediator and interpreter to the scheduled February 10, 2020 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 February 21, 2020, at 11:00 AM. Failure of Student's representative to appear telephonically at the order to show cause hearing on February 21, 2020, 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 PM on Tuesday, February 18, 2020.
2. A telephonic order to show cause hearing shall be convened at 11:00 AM on Friday, February 21, 2020.

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