BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PARAMOUNT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018100224 ORDER TO SHOW CAUSE WHY PARAMOUNT UNIFIED SCHOOL DISTRICT SHOULD NOT BE ORDERED TO PAY EXPENSES

On September 28, 2018, Student filed with the Office of Administrative Hearings a request for a due process hearing naming Paramount Unified School District. On October 28, 2018, OAH granted the parties' joint request for continuance, setting a mediation for 9:30 a.m., on December 5, 2018.

On December 5, 2018, the assigned mediator traveled to the Paramount's office. Student's family, Student's attorney and OAH provided interpreter were present for the mediation. Paramount's representative was present. However, Paramount's attorney, Angela Gordon, did not appear for the mediation. When contacted as to her absence, Ms. Gordon replied that she did not appear as she believed that the mediation was to be continued. OAH subsequently canceled 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).)

ORDER TO SHOW CAUSE

Paramount is ordered to show cause why Paramount's attorney, Angela Gordon, should not be required to pay OAH's costs as to the December 5, 2018 mediation, which includes OAH travel and interpreter expenses related to the mediation. **Paramount is ordered to file a written response with OAH by no later than 5:00 p.m. on December 19, 2018**. A copy of the response shall be served upon Student. Student is not expected to file a written response.

Paramount's response shall address why Paramount's attorney did not appear at the mediation despite asking for and agreeing to the mediation date in the continuance request. Paramount**'s written response shall address why OAH should not order Paramount to pay OAH's expenses for sending a mediator to the scheduled December 5, 2018 mediation and OAH travel and interpreter expenses related to this mediation, and for this order to show cause.**

The order to show cause hearing shall take place telephonically on December 28, 2018, at 11:00 a.m. Failure of Paramount's representative to appear telephonically at the order to show cause hearing on December 28, 2018, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Paramount Should Not be Ordered to Pay Expenses is hereby issued. Paramount must file a response no later than 5:00 p.m. on Wednesday, December 19, 2018.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, December 28, 2018.

IT IS SO ORDERED.

DATE: December 12, 2018

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