BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026030918

# ORDER GRANTING MOTION TO SHIFT COSTS, SPECIFYING COSTS SHIFTED, AND DISMISSING EXPEDITED AND NON-EXPEDITED DUE PROCESS REQUESTS

APRIL 22, 2026

On April 21, 2026, the undersigned issued an Order to Show Cause as to why costs incurred by the Office of Administrative Hearings and West Covina Unified School District should not be shifted to Student's counsel(s). The costs at issue were for appearing at the scheduled expedited due process hearing and preparing the Order to Show Cause and West Covina's. Despite having settled the case, Student did not file a request to dismiss the case prior to hearing nor timely appear at the scheduled due process hearing.

An Order to Show Cause hearing was held at 9:00 AM on April 22, 2026. Ordered to appear were Diana Renteria, Student's counsel of record, and attorney Ryan Song who appeared on Student's behalf at the Prehearing Conference. Counsel for West Covina, Tracy Petznick Johnson, also appeared.

Student filed a response on April 21, 2026. Student's written response concedes the failure to appear rests solely on counsel Ryan Song. Student asserts the Request for Dismissal with Prejudice should have been filed prior to the 9:30 AM convening of the Expedited Due Process hearing.

Student's written response, and counsel confirmed on the record, that he received the fully executed settlement agreement as of 8:42 AM on April 21, 2026. No notice of settlement or dismissal request was filed with OAH prior to the hearing convening at 9:30 AM. Ms. Johnson informed the undersigned that she expected the dismissal to have been submitted, but appeared as no formal dismissal had been issued from OAH. At approximately 9:40 AM, the undersigned having confirmed neither Ms. Johnson nor OAH had heard from Student's counsel(s), instructed Ms. Johnson to contact Student's counsel(s) and directed OAH staff to contact the Law Offices of Diana Renteria inquiring about Student's failure to appear. In Student's response to the OSC, Mr. Song stated that he had a "workstation malfunction" that created technical difficulties. As discussed more fully below, Mr. Song did not address how those difficulties lead to his failure to timely submit the dismissal request, call OAH to provide notice of settlement as required in the Order Following the Prehearing Conference, contact West Covina's counsel alerting her to the problem, or timely appear at 9:30 AM on April 21, 2026, to withdraw the matter on the record.

Student contends that the failure to timely withdraw his complaint and appear at hearing fails to meet the standard for cost-shifting under California law. As Student

alleges the conduct was an execution error in the final hour prior to hearing and not in bad faith. Mr. Song was apologetic in his response. However, as determined below, shifting costs is still warranted.

West Covina requested the following costs be shifted to Student:

April 2, 2026, .5 hours for appearing at the Expedited Mediation that Student failed to appear or cancel;

April 21, 2026, .9 hours for appearing at the expedited due process hearing after the matter had settled but before Student requested dismissal;

April 21, 2026, 2.6 hours for drafting the motion for sanctions/shifting costs and declaration in support;

April 22, 2026, .5 hours for appearing at the Order to Show Cause hearing.

On the record, West Covina withdrew its request for cost shifting for the failure to appear at the expedited mediation on April 2, 2026.

## PROCEDURAL HISTORY

On March 19, 2026, Student, through his attorney, the Law Offices of Diana Renteria, filed a request for due process hearing with the Office of Administrative Hearings, naming West Covina Unified School District. The Office of Administrative Hearings is called OAH. OAH designated this matter a dual case, meaning that there were expedited and non-expedited issues alleged in Student's complaint.

On March 20, 2026, OAH issued a Scheduling Order Setting Dual Hearing Dates, Prehearing Conference and Mediation, a 47-page document outlining all scheduled

hearing dates, staff contact information, and instructions on how to cancel mediations and withdraw due process hearing dates.

## FAILURE TO APPEAR AT THE EXPEDITED MEDIATION

Student failed to appear at the April 2, 2026, mediation. Student failed to notify OAH or West Covina's counsel of the decision not to participate in the expedited mediation.

Counsel for West Covina, Johnson attested in a sworn declaration, filed on April 21, 2026, that she appeared at the April 2, 2026, mediation. OAH assigned a mediator who prepared for and attended the mediation. Moreover, OAH case manager notes document three attempts to contact Renteria; however, there was no answer nor was a voice mailbox working.

The Scheduling Order directs parties who intend to cancel mediation do so the Friday prior to the scheduled mediation, which in this instance was March 27, 2026. No notice of cancellation was received by Student. Moreover, OAH provides parties an avenue to cancel the mediation up to the time it is convened by calling the assigned case manager and informing OAH of their need to cancel. No notice of cancellation was provided from Student. The failure to appear for the mediation is included here as part of the undersigned's analysis of Student's counsel history of bad faith tactics that, at a minimum, are frivolous.

## FAILURE TO APPEAR FOR THE EXPEDITED DUE PROCESS HEARING

OAH set the expedited due process hearing to start on April 21, 2023, at 9:30 AM. Invitations were sent to parties at 8:50 AM on April 20, 2026. The invites were not

returned as undeliverable nor is there any evidence that Student's counsel did not receive the invite in a timely manner.

On April 21, 2026, the undersigned opened the record for the first day of an expedited due process hearing. Johnson appeared. When no one from Student's side joined, Johnson was directed to contact Student's counsel. OAH also contacted Student's counsel ordering appearances by 10 AM.

When the matter reconvened at 10 AM. Student counsel, again, was not present. At that juncture, the undersigned issued a directive for an Order to Show Cause. After the undersigned had completed her order of vacating day one of the expedited hearing and issuing a verbal Order to Show cause, with written notice to follow, Song appeared on Student's behalf. Song was unable to hear the undersigned and all parties stood in abeyance until his audio issues resolved. At that juncture, Student still had not filed the notice of settlement nor made any attempt to notify OAH of technological issues.

## APPLICABLE LAW

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to the Office of Administrative Hearings. (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 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 the entity that is responsible for conducting due process hearings) 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) & €; see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"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).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "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.)

## DISCUSSION

Student argued costs should not be shifted to Student because counsel acknowledge his failure and apologized. Student argues this conduct all occurred in the final hour before a scheduled due process hearing and thus was not a bad faith or

frivolous tactic. Student further argues his response is proportionate to the outcome and no further action is warranted.

Student's argument is unpersuasive. Student reports at least two times in his response to the Order to Show Cause that he collected a $50,000 fee for legal services in this matter. Yet, counsel was unable to find a working computer or telephone to transmit the notice of settlement to the tribunal holding jurisdiction. Moreover, Song acknowledged the settlement was reached in principle days before the hearing, yet waited until *after* receiving the fully executed agreement to begin preparing the request to dismiss. When he discovered his technical difficulty, he took no steps to contact OAH or Johnson prior to hearing. At a minimum, had he contacted Johnson, arrangements could have been made to get the dismissal request verbally on the record thus eliminating the need to track down Student's counsel(s). Finally, no explanation was given why the named attorney, Renteria, also failed to appear or provide appropriate notice of settlement.

Student's Request for Due Process was signed by Renteria. The Prehearing Conference Statement was filed under Renteria's license and office header and signed by Song. The Response to the Order to Show Cause was filed under Renteria's license and office header and signed by both Renteria and Song. Renteria, as counsel of record, is required to ensure all lawyers and nonlawyers acting on her behalf, comply with the rules of Professional Conduct and the State Bar Act. (Rules of Prof. Conduct, rule 5.1).

In this instant case, Renteria's firm engaged in frivolous tactics. The tactics are deemed to be frivolous as they are completely without merit or for the sole purpose of harassing the other party. Renteria's firm had a fully executed agreement. Many options were at the firm's disposal to off-ramp the requirement to convene the hearing at 9:30 AM. Renteria's firm availed itself of none of them.

The ALJ shall determine the reasonable expenses based upon a declaration setting forth specific expenses incurred as a result of the bad faith or frivolous conduct. (Cal. Code. Regs., tit.1 § 1040(c).) Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates or employees. (Code Civ. Proc., § 128.5, subd. (f)(1)(C).) An order of sanctions shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. (Code Civ. Proc., § 128.5, subd. (f)(2).)

West Covina established it incurred 4.5 hours, at $300 per hour, of billable attorney time. West Covina timely appeared yesterday, and returned as directed at 10 AM. West Covina filed a 35-page response to the Order to Show Cause that included argument, supportive documentation, and a declaration from counsel. Finally, West Covina appeared as directed for the Order to Show Cause hearing. West Covina withdrew its request for cost shifting for .5 hours for Student's failure to appear at the expedited mediation. OAH has examined the costs and finds the expenditures as related to Student's failure to appear at the expedited due process hearing, a total of 4 hours, at the rate of $300 per hour, to be reasonable.

The fees are reasonable given the conduct of Renteria's firm and the deterrence impact of sanctions. (Code Civ. Proc., § 128.5, subd. (f)(2).) For purposes of payment, the Law Office of Diana Renteria will direct payment to West Covina through its counsel Tracy Petznick Johnson. As the attorney of record, Renteria will bear all costs. The sanctions shall be paid by the law firm and not shifted to its client. Renteria must further comply with reporting obligations as determined by the State Bar of California.

OAH's special education division is funded under contract with the Department of Education. As a public entity, OAH takes seriously the obligation to judicially manage public funds. That is among the reasons it issues orders clearly notifying filing parties of

the obligation to expeditiously cancel and withdraw matters. Those same orders also provide multiple vehicles for parties to provide such notice. When a mediator or judge is assigned to a matter and one party frivolously fails to appear, it is not only a waste of time but limited education resources. Thus, the undersigned carefully considered seeking the Department of Education's authority to shift its costs. Ultimately, in this instance, only West Covina's costs will be shifted. Song and Renteria are on notice, however, that OAH may seek authority to shift its costs if similar instances occur.

## ORDER

1. Student's request to dismiss the expedited and non-expedited matters with prejudice in this case is granted.
2. West Covina's request for sanctions shifting attorney's fees to the Law Offices of Diana Renteria is granted in the amount of $1,200.
3. No costs associated with this order shall be shifted to Parents.
4. Diana Renteria is responsible for complying with the reporting obligations to the State Bar of California.
5. Within 35 days of the date of this order, West Covina shall file with OAH a statement showing whether the full amount assessed was properly paid.
6. A copy of this order will be mailed directly to Parent.

*Tiffany Gilmartin*

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings