BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017060361 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

On June 26, 2017, the Office of Administrative Hearings granted Los Angeles Unified School District's motion to file an amended request for a due process hearing naming Student. On June 27, 2017, OAH issued a scheduling order, setting the mediation for 1:30 p.m., on July 11, 2017. On July 7, 2017, OAH left a telephone message with Student's Parents to contact OAH to confirm their attendance at the mediation. On July 10, 2017, at approximately 4:00 p.m., advocate Victoria Baca filed a notice of representation of Student with OAH, which made no representation as to Ms. Baca's attendance at the mediation scheduled for the next day.

On July 11, 2017, the assigned mediator traveled to the District's office, along with an interpreter for Parents obtained by OAH. The District representative was present for the mediation. Parents and Ms. Baca did not appear for the mediation. Ms. Baca was contacted and started that she had sent to District on July 10, 2017, a continuance request.

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

Student's advocate apparently contacted District to request to continue this matter, but did not contact OAH to cancel the mediation, which caused the assigned mediator and interpreter to unnecessarily travel to the District's offices. Therefore, Student is ordered to show cause why Student's advocate should not be required to pay OAH's costs as to the July 11, 2017 mediation, which includes OAH travel expenses related to the mediation. **Student is ordered to file a written response with OAH by no later than 5:00 p.m. on July 18, 2017,** by facsimile transmission to (916) 376-6319. A copy of the response shall be served upon District. District is not expected to file a written response.

Student's response shall address why Student's advocate did not contact OAH to inform OAH of the canceled mediation when Student's advocate sent notification to District about wanting a continuance. **Student's written response shall address why OAH should not order Student to pay OAH's expenses for sending a mediator to the scheduled July 11, 2017 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 July 21, 2017, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on July 21, 2017, 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 p.m. on Tuesday, July 18, 2017.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, July 21, 2017.

DATE: July 13, 2017

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