BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090829

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE AND SETTING ORDER TO SHOW CAUSE

NOVEMBER 23, 2020

On November 23, 2020, Administrative Law Judge Cararea Lucier, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Mary Kellogg, Attorney at Law, appeared on behalf of Los Angeles Unified School District. No one appeared on Student's behalf. The PHC was recorded.

Under the reauthorized Individuals with Disabilities Education Improvement Act, a hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of Student's due process notice, in the absence of an extension. (See Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that parties and their representatives participate in advancing the matter to hearing. Absent receipt of notification from Student withdrawing his request for a hearing or agreeing to dismiss his case, the parties must be prepared for a hearing as currently scheduled, and OAH is obligated to hold a PHC and due process hearing.

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 ordered 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).)

On September 28, 2020, OAH served both parties with a scheduling order and instructions for participating in the PHC and due process hearing. These instructions required the parties to file a PHC statement three business days prior to the PHC. On November 4, 2020, OAH granted the parties' joint request for a continuance and set the

PHC for November 23, 2020. The Order required the parties to file a PHC statement three business days prior to the PHC, and to file participant information forms two business days prior to the PHC.

Los Angeles timely filed a PHC statement and participant information form, and appeared at the November 23, 2020, PHC.

Student failed to file a PHC statement or participant information form. Student's counsel did not appear for the PHC. OAH staff attempted to contact Student's counsel several times to inform him of the PHC. The ALJ and Los Angeles' counsel waited over 30 minutes for Student's counsel to appear before convening the PHC. After the PHC concluded OAH staff spoke with Student's counsel and were informed he thought the matter had been continued.

Student's failure to comply with OAH orders and failure to appear for the PHC was discourteous and unprofessional and resulted in the ALJ and Los Angeles' counsel needlessly wasting time and resources. Therefore, Student is ordered to show cause why Student's attorney, George Crook, should not be required to pay OAH's costs as to the November 23, 2020 PHC. Student is ordered to file a written response with OAH by no later than 5:00 PM on December 2, 2020. A copy of the response shall be served upon the opposing party.

Student's response shall address why Student's attorney did not file a PHC statement and participant information forms, as well as why Student's attorney failed to appear for the November 23, 2020 PHC. Student's written response shall address why OAH should not order Student's attorney to pay OAH's expenses for the November 23, 2020, PHC and for this order to show cause.

The order to show cause hearing shall take place via videoconference on December 7, 2020, at 10:00 AM. Failure of Student's representative to appear at the order to show cause hearing on December 7, 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 Wednesday, December 2, 2020.
2. A videoconference order to show cause hearing shall be convened at 10:00 AM on Monday, December 7, 2020.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings