BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GOLETA UNION SCHOOL DISTRICT.	OAH Case No. 2017080338 ORDER TO SHOW CAUSE RE: FAILURE TO APPEAR AT PREHEARING CONFERENCE DATE: FRIDAY, SEPTEMBER 15, 2017 1 PM

On July 27, 2017, Student's Parent filed a request for due process hearing on behalf of Student naming Goleta Union School District. On August 8, 2017, the Office of Administrative Hearings issued a scheduling order, setting this matter for prehearing conference at 1:00 p.m., on September 8, 2017. This Prehearing Conference was scheduled to be convened by Administrative Law Judge Penelope Pahl, Office of Administrative Hearings.

Melissa Hatch, Attorney at Law, appeared on behalf of Goleta. Two attempts were made to contact Student's attorney Andrea Marcus: one at 1:00 p.m., one at 1:16 p.m.. Messages were left by the undersigned on Ms. Marcus' voice mail each time a call was placed with the final message informing Ms. Marcus that an order would be issued scheduling a hearing on an Order to Show Cause as to why the case should not be dismissed.

APPLICABLE LAW

If the parent and local education agency have not resolved the due process complaint within 30 days of the receipt of the complaint, OAH is required to issue a decision within the next 45 days, unless a continuance is granted for good cause. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.51; Ed. Code, § 56502, subd. (f).) An ALJ presiding over a hearing may "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).) "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).) "Whether an action is frivolous is governed by an objective standard: any reasonable

attorney would agree it is totally and completely without merit [citations]." (*Levy v. Blum* (2001) 92 Cal.App.4th 625, 635.) In addition, there must be a showing of improper purpose. (*Ibid*.) A finding of "bad faith" does not require a determination of evil motive. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693,702.)

DISCUSSION

Given the short time frames applicable to due process hearings, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing or resolution. Student's counsel's non-compliance with procedure and failure to participate put the timely resolution of this matter in doubt. As the attorney of record, Ms. Marcus is responsible for understanding and following OAH's procedures, including making all required appearances.

Student is ordered to show cause, at a telephonic hearing on Friday, September 15, 2017, at 1:00 p.m., as to why this matter should not be dismissed for failure to participate, prosecute or advance the matter and/or the costs to OAH and/or to District's counsel for convening the PHC should not be shifted to Student. Should Student provide adequate justification to overcome dismissal at the hearing on the order to show cause, the PHC shall proceed immediate following the OSC hearing.

Ms. Marcus is ordered to file a declaration with OAH no later than 3:00 p.m. on September 13, 2017, explaining her failure to appear at the PHC on September 8, 2017, failure to file a prehearing conference statement, and stating why the case should not be dismissed and why costs should not be shifted to Student for failure to appear at the scheduled Prehearing Conference. Failure of Ms. Marcus to submit a declaration and appear at the hearing on the Order to Show Cause may result in a dismissal of this matter without further notice. Goleta may file a request for reimbursement of costs by September 13, 2017, that will be considered in conjunction with Student's declaration in response to this OSC.

The Prehearing Conference is continued to Friday, September 8, 2017 at 1:00 p.m. per the Order Following Prehearing Conference and shall immediately follow the order to show cause hearing should the case not be dismissed.

ORDER

1. Student's attorney shall file a declaration under penalty of perjury explaining her failure to appear at the PHC on September 8, 2017, no later than September 13, 2017. District may file a request for reimbursement of PHC costs by that date if it so chooses.

2. An order to show cause hearing shall be convened telephonically by OAH at 1:00 p.m. on September 15, 2017.

3. The PHC is continued to September 15, 2017, and shall begin immediately following the order to show cause hearing should Student's attorney provide an acceptable explanation for her failure to appear at the PHC on September 8, 2017.

IT IS SO ORDERED.

DATE: September 8, 2017

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings