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 2020021144

# ORDER TO SHOW CAUSE AS TO WHY THE PARTIES SHOULD NOT BE ORDERED TO PAY EXPENSES OF OFFICE OF ADMINISTRATIVE HEARINGS

MAY 14, 2020

Student and Los Angeles Unified School District failed to appear for a video-conference mediation in this matter scheduled with the Office of Administrative Hearings, referred to as OAH, for May 13, 2020, from 1:30 PM through 5:00 PM. Administrative Law Judge Christine Arden joined the Microsoft Teams Joint Meeting of the mediation about 1:20 PM. When the parties did not appear at the mediation the OAH case manager for this matter left a voice mail with Student's attorneys' office, and spoke via telephone with Rudy, a representative of Los Angeles' due process department, asking each of them to inform OAH why the parties failed to appear at the

mediation. At 2:05 PM Natalie Hofland, representative of Los Angeles, joined the Teams Mediation Joint Meeting. Hofland informed the ALJ that the parties had reached an agreement in principle, but a written agreement was not yet signed. Hofland further stated she believed Student's attorney, Dina Kaplan, would inform OAH that the mediation scheduled for May 13, 2020 at 1:30 PM was no longer necessary and should be cancelled. Kaplan later told the case manager that Kaplan had responded to the Microsoft Teams invitation for the mediation by stating the case had settled.

## APPLICABLE LAW

The Order Setting Telephonic and Video Mediation Procedures issued by the Special Education Division Chief Administrative Law Judge, dated April 15, 2020, was served on the parties in this matter on May 1, 2020. That Order stated "The meeting invitations are intended for the sole purpose of connecting parties to the mediation at the scheduled time. Do not reply to any invitation emails, simply use the links to join the meetings. If you need to communicate any information regarding your case, please contact your case manager, including if you cannot participate in the mediation."

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).) 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. (Gov. Code, § 11455.10.)

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) & (e); see Gov. Code, § 11455.30, subd. (a).) 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.) 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).)

## ORDER TO SHOW CAUSE

Here, neither Student, nor Los Angeles, informed OAH that, because this case had settled in principle, a mediation was no longer necessary and it should be cancelled. Student's attorney's response to the Teams mediation invitation stating the matter had settled is expressly prohibited by The Order Setting Telephonic and Video Mediation Procedures. Student and Los Angeles are ordered to show cause in writing no later than May 15, 2020 at 5:00 PM, as to why the parties, or one of them should not be ordered to pay the expenses of OAH incurred as a result of the parties' failure to timely inform OAH that the mediation should be cancelled.

The order to show cause hearing shall take place via videoconference through Microsoft Teams. By May 15, 2020 at 3:00 PM the parties shall file with OAH the email addresses and phone numbers of their representatives who will appear at the order to

show cause hearing. Failure of the parties to appear at the hearing on the order to show cause may result in sanctions.

## ORDER

1. Student and Los Angeles are ordered to show cause in writing no later than May 15, 2020 at 5:00 PM, as to why the parties, or one of them, should not be ordered to pay OAH expenses for violating the procedures contained in the April 15, 2020 order and failing to appear at the mediation, set on the date and time the parties requested, or cancel the mediation by telephone or written notice through SEFilings.
2. A videoconference hearing on the Order to Show Cause is scheduled at 1:00 PM on Monday, May 18, 2020, unless otherwise ordered. Each of the parties shall file with OAH the email addresses of their representatives who will appear at that hearing by 3:00 PM on Friday, May 15, 2020.

## IT IS SO ORDERED.

DocuSigned by:
Christine Arden
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Christine Arden

Administrative Law Judge

Office of Administrative Hearings