BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MOJAVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070649

ORDER TO SHOW CAUSE AS TO WHY OAH COSTS SHOULD NOT BE SHIFTED TO STUDENT'S COUNSEL FOR FAILURE TO APPEAR AT EXPEDITED PREHEARING CONFERENCE

AUGUST 5, 2024

On July 18, 2024, Student, through his attorney, filed a request for due process, also called a complaint, with the Office of Administrative Hearings, called OAH, hearing naming Mojave Unified District as respondent. The complaint alleged both expedited and non-expedited claims. On July 19, 2024, OAH issued a scheduling order setting a prehearing conference regarding the expedited claims for August 5, 2024 at 1:00 PM. On August 2, 2024, both named counsel for Student were emailed videoconference invitations for the 1:00 PM, August 5, 2024 Expedited Prehearing Conference

At 1:00 PM, the undersigned ALJ convened the prehearing conference, also called a PHC. Student's counsel failed to appear at the Prehearing Conference. At shortly after 1:10 PM, the case manager assigned to this case called Student's counsel's office to inform Student's counsel the PHC had commenced, and the Administrative Law Judge was waiting for him. Counsel was not available to take the call. The receptionist informed the case manager that the message would be forwarded. The undersigned and counsel for Mojave waited until 1:22 pm. Mojave's appearance, and Student's failure to appear were noted on the record. At no time between the appointed time for the PHC and the conclusion of discussions on the record, did Student's counsel appear to participate in the PHC.

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive, an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006). All subsequent references to the Code of Federal Regulations are to the 2006 version.) OAH must conduct an expedited due process hearing within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*)

Here, Student has failed to appear at the PHC scheduled for the Expedited portion of the complaint, resulting in the need to dismiss Student's expedited claims. OAH does not have authority to extend the time to complete expedited special education due process hearing procedures. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R.

§ 300.532(c)(2).) Therefore, the Expedited Prehearing Conference cannot be rescheduled.

Student is ordered to show cause in writing, no later than Tuesday August 15, 2024 as to why OAH's costs related to preparing for, and convening, the prehearing conference; and drafting post PHC orders, should not be shifted to Student. Student shall address why he failed to appear for the Prehearing Conference as ordered by the July 19, 2024 scheduling order, and any facts indicating a cost-shifting order should not be issued. Mojave shall have until noon on Thursday August, 17, 2024 to file any response to Student's filing regarding the order to show cause.

The Order to Show Cause hearing in this matter is scheduled for 9:30 am, Friday, August 18, 2024.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings