BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FALLBROOK UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013100130 ORDER DENYING SANCTIONS; VACATING ORDER TO SHOW CAUSE WHY PARTY SHOULD NOT BE ORDERED TO PAY EXPENSES

On April 1, 2014, the Office of Administrative Hearings (OAH) issued an Order to Show Cause (OSC) why sanctions should not be imposed on the Fallbrook Union High School District (Fallbrook), or counsel for Fallbrook, and Fallbrook ordered to pay expenses incurred by OAH. The OSC was based upon Fallbrook's failure to appear at a prehearing conference (PHC). The PHC was calendared in this matter for March 28, 2014, at 3:00 p.m., before Administrative Law Judge (ALJ) Paul H. Kamoroff, the undersigned. The ALJ convened the PHC, for which Sharon A. Watt, counsel for Fallbrook, failed to appear. On April 3, 2014, Fallbrook, through its counsel Ms. Watt, submitted a response to the OSC. Student did not file a response.

APPLICABLE LAW

In certain circumstances, an ALJ 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."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) 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.)

DISCUSSION

The ALJ has the ability, and the responsibility, to control due process proceedings under the Individuals with Disabilities Act (IDEA) similar to those in a civil or criminal

action before other tribunals. OAH's policies regarding the obligation of counsel to appear for all calendared matters is well known to Ms. Watt as she has practiced before OAH for some time. These procedures are in place to ensure that cases are timely calendared, continuances are properly granted and OAH can ensure that cases will be processed under the time lines set out by the IDEA. The procedures are designed to protect the rights of both the child and the public education agency.

Here, Fallbrook has advanced several arguments to avoid costs in this matter. However, in its response, Fallbrook has inaccurately stated facts pertaining to the PHC for this matter. The ALJ made several attempts to obtain Ms. Watt's participation in the teleconference for the PHC. On two separate phone calls the undersigned was placed on hold by Ms. Watt's office. On each occasion, the ALJ introduced himself and stated the purpose of the phone call. Each call was clear and Ms. Watt's staff was informed of the basis of each phone call. The ALJ was first told by Ms. Watt's staff that she was not in the office, and was later informed that she was in the office but on another phone call. Ms. Watt did not appear and after the unsuccessful attempts, the undersigned informed Ms. Watt's office that the PHC would move forward without Ms. Watt.

Next, Fallbrook's argument that it had intended to timely file a peremptory challenge prior to the PHC, but failed to do so, is not relevant to the OSC. Similarly, Ms. Watt's contention that the ALJ is biased because he granted Student's motion to amend complaint is not relevant to the OSC, and is misguided. As detailed in OAH's Order Granting Motion to Amend, the undersigned ALJ granted Student's motion to amend because it was timely submitted.

Notwithstanding the foregoing, Ms. Watt has submitted an acceptable argument against her, or Fallbrook, being sanctioned costs related to her failure to appear. She has taken responsibility for a clerical error committed by her staff, who failed to calendar the March 28, 2014 PHC. On that basis, counsel for Fallbrook was unable to appear at the PHC. Although Ms. Watt is responsible for her own appearances, the present failure to appear is atypical of her past conduct; she timely filed the PHC statement on behalf of Fallbrook; and the PHC was able to proceed and be completed, albeit later than scheduled. Finally, Student has not indicated that he has been prejudiced by Fallbrook's failure to appear at the PHC.

Given the foregoing, the Order to Show Cause as to why Fallbrook, or its counsel, should not be ordered to pay expenses is hereby vacated.

ORDER

1. The Order to Show Cause why Fallbrook should not be ordered to pay expenses is hereby vacated.

2. The telephonic hearing regarding the Order to Show Cause, set for 1:00 p.m. on April 4, 2014, is hereby vacated.

DATE: April 4, 2014

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings