BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040219
v.	ORDER TO SHOW CAUSE WHY COSTS SHOULD NOT BE SHIFTED AND MATTER DISMISSED FOR FAILURE TO APPEAR AT STATUS CONFERENCE AND SETTING HEARING FOR ORDER TO SHOW CAUSE
ADELANTO ELEMENTARY SCHOOL DISTRICT, SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS AND WESTMINSTER SCHOOL DISTRICT.	

On July 5, 2017, a telephonic status conference was scheduled at the request of the parties. The parties had notified the Office of Administrative Hearings on May 18, 2017 that they had reached a settlement pending the approval of the school board. As such, the parties requested that the hearing dates be vacated and a status conference set after the date on which the board was set to consider the settlement agreement. Student did not notify OAH prior to the settlement conference that the settlement was approved and to dismiss the case, therefore the status conference remained on calendar for the purpose of setting hearing dates or rescheduling the status conference because the board had failed to consider the settlement.

Student's attorney Michelle Powers failed to appear for the status conference. Ms. Powers was called at both her office telephone number and her cell number, which she had not provided to OAH but was provided by the attorney for the Respondents when he appeared. There was no answer at either number.

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 this case, 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. Powers is responsible for understanding and following OAH's procedures, including making all required appearances. Failure to do so may result in the complaint being dismissed and/or costs being shifted.

Ms. Powers must filed a declaration with an explanation as to why she failed to appear at the status conference no later than 5:00 p.m. Friday, July 7, 2017. Ms. Powers is also ordered to appear telephonically at 1:00 p.m. on July 12, 2017, at which time the order to show cause will be heard.

The Status Conference is continued and shall immediately follow the order to show cause hearing, unless the matter has been dismissed prior. Respondents' attorney may participate in the order to show cause hearing, but is not ordered to do so. However, if Respondents wish to seek cost shifting, the attorney must file a declaration and appear at the order to show cause hearing detailing such costs. The attorney should advise OAH in this regard. Otherwise, Respondents' attorney shall be contacted telephonically by OAH following the order to show cause hearing.

ORDER

1. An order to show cause hearing shall be convened telephonically by OAH at 1:00 p.m. on July 12, 2017. Student's attorney is ordered to appear.

2. The Status Conference is continued to July 12, 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 status conference on July 5, 2017.

IT IS SO ORDERED

DATE: July 5, 2017

DocuSigned by:
Margaret Gibson
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MARGARET GIBSON
Presiding Administrative Law Judge
Office of Administrative Hearings