BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014100290 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

At the December 12, 2014 Prehearing Conference in this matter, Student's attorney Nicole Hodge Amey moved to continue the expedited hearing date, which the Office of Administrative Hearings denied on that date. On December 15, 2014, Ms. Amey, on behalf of Student, filed a request to continue the expedited hearing dates to January 6, 2015, based upon the death of a parent of her husband. The Panama-Buena Vista Unified School District submitted an opposition on December 16, 2014. On December 16, 2014, OAH granted Student's December 15, 2014 continuance request based upon Ms. Amey's declaration regarding the death of a parent of her husband and the two federal court matters cited in her declaration, even though she did not submit proof to substantiate these claims.

In the December 16, 2014 order, OAH required Ms. Amey to submit to OAH and Panama-Buena Vista by 5:00 p.m., on December 29, 2015, documentary proof of the passing of a parent of her husband and the federal court matters mentioned in her declaration. The order further stated that failure to timely submit the requested documentation may subject Ms. Amey to further sanctions. Ms. Amey failed to timely submit the required information.

APPLICABLE LAW

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) However, when a matter is filed as an expedited due process hearing on a disciplinary matter must occur within 20 school days of receipt of the due process complain, with a decision within 10 days of the expedited hearing. (20 U.S.C. § 1415(k)(4)(B).) There is no provision of law authorizing the continuance of an expedited hearing.

Under certain circumstances, an administrative law judge 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."].) A party may be order to pay expenses of a party, or OAH 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, subd. (a).) 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. (Govt. Code § 11455.10.) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

ORDER TO SHOW CAUSE

The December 16, 2014 order explicitly required Ms. Amey to submit documentary proof regarding the death of a parent of her husband and the two federal court matters that were the basis of her continuance request. Ms. Amey failed to comply OAH's order without explanation. OAH previously sanctioned Ms. Amey on December 9, 2014, for engaging in dilatory conduct. The December 16, 2014 order requested documentary proof because of the prior continuance request that OAH denied and the prior sanctions imposed on Ms. Amey.

Student is ordered to show cause why Student's counsel should not be required to pay OAH's costs for granting the December 15, 2014 continuance request, which include OAH travel expenses related to the previously set expedited hearing date of December 17, 2014. **Student is ordered to file a written response with OAH by no later than 5:00 p.m. on January 7, 2015,** by facsimile transmission to (916) 376-6319. A copy of the response shall be served upon the Panama-Buena Vista by facsimile. Panama-Buena Vista is not expected to file a written response.

Student's response shall address why Ms. Amey failed to submit the information in the December 16, 2014 order, and shall provide documentary proof that the events in Ms. Amey's December 15, 2014 declaration actually occurred. **Student's written response shall address why OAH should not order Student to pay OAH's expenses for granting the December 15, 2014 continuance request and OAH travel expenses related to the previously set expedited hearing date of December 17, 2014, and for this order to show cause.**

The order to show cause hearing shall take place telephonically on January 9, 2015, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on January 9, 2015, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Student Should be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on Wednesday, January 7, 2015.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, January 9, 2015.

DATE: December 30, 2014

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings