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 No. 2016051141 ORDER DISMISSING ORDER TO SHOW CAUSE

On May 17, 2016, Student filed a request for a due process hearing with the Office of Administrative Hearings naming Los Angeles Unified School District. Student filed the complaint via faxination to the appropriate OAH faxination number: (916) 376-6319. On June 29, 2016, OAH granted the parties' joint request for a continuance, setting the mediation for 9:00 a.m., on July 28, 2016. On July 20, 2016, District confirmed the mediation.

On July 20, 2016, the parties agreed amongst themselves to begin the mediation at 10:30 a.m. rather than 9:00. Student's attorney called OAH and was told to submit a written request. On July 22, 2016, Student's attorney submitted the written request to the wrong number: (916-263-1774). Furthermore, District took no action to inform OAH of the proposed change in the start time.

On July 28, 2016, the assigned mediator traveled to the District's office for the 9:00 a.m. scheduled mediation, and upon her arrival was informed by the District representative that District and Student's counsel had agreed to postpone the mediation until 10:30 a.m.

Furthermore, the mediation did not then commence at 10:30. Although Student's counsel appeared, Parent did not appear and could not be reached by telephone.

On July 29, 2016, the parties were ordered to show cause why District and Student's counsel should not be required to pay OAH's costs as to the July 28, 2016 mediation.

According to Student's counsel's declaration dated August 1, 2016, she faxed the start-time information to the wrong OAH fax number, but that number has accepted her faxes in the past.[1] According to District's declaration, it was available at the scheduled time; District does not indicate that it made any attempt to communicate with OAH about the

[1] The number she used is not the OAH faxination number, of which counsel was clearly aware from prior filings. The incorrect number is actually a telephone number for an OAH staff member who, notably, was not assigned to the instant matter.

proposed scheduling change. Further, according to Student's counsel's declaration, she was made aware by Parent on the evening of July 28, 2016, that Parent would not appear, and communicated this fact to District but not to OAH.

APPLICABLE LAW

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).)

DISCUSSION

Having considered all of the pleadings and the evidence, it appears that District relied on Student's counsel to communicate with OAH, and that Student's counsel attempted to do so with regard to the change in start time, but sent documents to the wrong number, a telephone number, although Student's counsel declares that that number has accepted faxes in the past. Further, it appears that neither party communicated with OAH as to Parent's inability to appear at the reconvened time.

The lack of clear timely communication between the parties and OAH was negligent and inconsiderate of the waste of OAH and taxpayer resources, but was not done intentionally to cause unnecessary delay or to waste judicial resources. Accordingly, the Order to Show Cause is dismissed.

However in the future each party shall be considered independently responsible for notifying OAH, at the correct faxination number, of any issues affecting OAH's calendar.

ORDER

1. The Order to Show Cause is dismissed.

2. Each party shall in the future be considered independently responsible for notifying OAH, at the correct faxination number, of any issues affecting OAH's calendar.

DATE: August 8, 2016

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings