BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. UNION SCHOOL DISTRICT.	OAH CASE NO. 2013050110 ORDER TO SHOW CAUSE AS TO WHY SANCTIONS SHOULD NOT BE INITIATED AND COUNSEL ORDERED TO PAY EXPENSES

On July 26, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Attorney Susan Foley appeared on behalf of Parent and Student. Attorney Eliza McArthur appeared on behalf of the Union School District (District). At first, the ALJ attempted unsuccessfully to reach Student's counsel three times. Each time the call was forwarded to voicemail and the ALJ left three separate messages, first at 1:00 p.m., then at 1:20 p.m. and finally at 1:30 p.m., advising counsel that this was the date and time set for the PHC and that it would be convened in her absence if she did not make herself available by 1:30 p.m. Upon convening the PHC at 1:30 p.m., District's counsel advised the ALJ that she had spoken with Student's counsel who had become available. The ALJ successfully reached Student's counsel on the fourth attempt at approximately 1:40 p.m.

Counsel were informed of the July 26, 2013 PHC on June 7, 2013, when OAH granted the parties' joint request for a continuance and scheduled this PHC. Pursuant to the initial scheduling order dated May 3, 2013, the parties were required to file a PHC statement at least three business days prior to the PHC. Neither counsel filed a PHC statement nor did they inform OAH of the status of the case, or timely request a continuance to further their settlement efforts.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA), a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code, §§ 56502, subd. (f), and 56505, subd. (f)(3).) 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.

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."].) A party may be ordered 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 over the matter may place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).)

DISCUSSION

When a party files a complaint pursuant to the IDEA, that party has a duty to either prosecute the case which includes disclosing his witnesses and documentary exhibits and otherwise prepare for hearing by attending the mandatory PHC, or timely seek a continuance of the PHC for good cause. Here, counsel for both parties elected to not file a PHC statement and did not otherwise inform OAH of the pending settlement and timely seek a continuance of the PHC and/or hearing dates. This is not the first time that counsel have failed to timely file a PHC statement or seek a continuance. Further, Student's counsel did not appear for the PHC at the scheduled time of 1:00 p.m. Student's counsel did not appear until the ALJ initiated a fourth phone call, based upon District's counsel's representation that she would now be available to participate, approximately 40 minutes after the scheduled PHC time. Counsels' failure to follow OAH orders is disruptive and resulted in OAH incurring costs for the ALJ's preparation for and conducting the PHC when neither party was prepared to move forward with the PHC. Counsels' verbal request for a continuance of the PHC was granted and is addressed in a separate order issued this same date.

In light of the above, OAH issues this Order to Show Cause as to Why Sanctions Should Not be Initiated (OSC). The parties are ordered to show cause why they should not be required to pay OAH's costs to prepare for and conduct the PHC as well as this OSC. **The parties shall submit written responses to this OSC, including any supporting declarations, showing why sanctions should not be initiated no later than 5:00 p.m. on July 31, 2013, by facsimile transmission to (916) 376-6319.** The parties shall serve a copy of their response on the other.

Student's response shall address why his counsel did not file a PHC statement; why counsel did not notify OAH of the status of the case and timely request a continuance prior to the PHC; and why counsel did not appear for the PHC at the scheduled time. District's response shall address why counsel did not file a PHC statement or notify OAH of the status of the case and timely request a continuance.

The order to show cause hearing shall take place telephonically on Friday, August 2, 2013, at 3:00 p.m. Failure of counsel to appear may result in additional sanctions. The OSC may only be vacated by order of OAH, regardless of whether the parties settle this matter prior to August 2, 2013.

ORDER

1. An Order to Show Cause as to Why Sanctions Should Not be Initiated is hereby issued as to both parties. The parties shall file a written response, including supporting declarations, no later than 5:00 p.m. on Wednesday, July 31, 2013.

2. A telephonic order to show cause hearing shall be convened at 3:00 p.m. on Friday, August 2, 2013.

3. All dates in this matter shall remain as calendared, pursuant to the order following PHC which is being issued on this date.

IT IS SO ORDERED.

Dated: July 29, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings