BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

COVINA-VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019070878

ORDER TO SHOW CAUSE WHY PARTIES SHOULD NOT BE ORDERED TO PAY EXPENSES

On July 22, 2019, Student filed with the Office of Administrative Hearings, referred to as OAH, a request for a due process hearing naming Covina Valley Unified School District. On August 8, 2019, OAH granted the parties' joint request for continuance, setting a mediation for 9:30 AM, on October 15, 2019.

On October 15, 2019, the assigned mediator traveled to the Covina Valley's office. Upon the mediator's arrival for the mediation, the mediator was informed that the parties had settled the case and the mediation was not required. On October 17, 2019, Student's attorney, Amanda Selogie, filed a notice of dismissal based on a settlement agreement that Covina Valley's school board ratified on October 15, 2019. Neither Attorney Selogie nor Covina Valley's attorney, Constance M. Taylor, informed OAH that the parties had settled this matter pending board approval and to cancel the mediation. OAH subsequently canceled the mediation.

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).)

ORDER TO SHOW CAUSE

Student and Covina Valley are ordered to show cause why their attorneys attorney should not be required to pay OAH's costs as to the October 15, 2019 mediation, which includes OAH travel and other expenses related to the mediation. Student and Covina Valley are ordered to file a written response with OAH by no later than 5:00 p.m. on October 25, 2019. A copy of the response shall be served upon the opposing party.

Each parties' response shall address why their respective attorney did not appear at the mediation despite asking for and agreeing to the mediation date in the continuance request. Each party's written response shall address why OAH should not order Attorneys Selogie and Taylor to pay OAH's expenses for sending a mediator to the

scheduled October 15, 2019 mediation and OAH travel and expenses related to this mediation, and for this order to show cause.

The order to show cause hearing shall take place telephonically on November 1, 2019, at 11:00 a.m. Failure of the parties' representative to appear telephonically at the order to show cause hearing on November 1, 2019, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Attorneys Selogie and Taylor Should Not be Ordered to Pay Expenses is hereby issued. Each party must file a response no later than 5:00 p.m. on Friday, October 25, 2019.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, November 1, 2019.

IT IS SO ORDERED.

DocuSigned by:
Peter Paul Castillo
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DATED: October 18, 2019

Peter Paul Castillo
Presiding Administrative Law Judge
Office of Administrative Hearings