BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016040799 ORDER FOLLOWING ORDER TO SHOW CAUSE HEARING, VACATING ORDER TO SHOW CAUSE AND SETTING DUE PROCESS HEARING DATES

On August 25, 2016, the Office of Administrative Hearings issued an Order to Show Cause as to why costs should not be shifted for parties' failure to disclose contents of evidence that would disqualify Administrative Law Judge Theresa Ravandi from presiding over this matter. On August 29, 2016, OAH conducted the OSC hearing. Evan Goldsen, attorney at law, appeared on behalf of Student. Matthew Juhl-Darlington and Steven Wong, attorneys at law, appeared on behalf of Antioch Unified School District; also present for Antioch was Dr. Ruth Rubalcava, the Director of Special Education. The hearing was recorded.

APPLICABLE LAW AND DISCUSSION

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."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With prior approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to 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, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).)

"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).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "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).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

On the first day of hearing in this matter, August 16, 2016, ALJ Ravandi disclosed to the parties her husband's place of employment because she noted, prior to the start of the hearing, that one of the potential exhibits was a letter authored by her husband's employer. Following this disclosure she heard and denied Antioch's peremptory challenge and Antioch's request for recusal for cause. Neither party disclosed to ALJ Ravandi that the evidence would establish that her husband's employer had provided Student with legal representation during the time period at issue in this case. Upon learning what the evidence contained, following two days of hearing, ALJ Ravandi recused herself. The OSC for August 29, 2016, was ordered so that OAH may consider whether the actions or omissions by the parties constituted grounds to shift OAH's costs for two days of hearing to the parties or their legal counsel.

Both parties submitted responses to the OSC. Having considered the responses and having heard the parties' arguments during the August 29, 2016 hearing, the Order to Show Cause is vacated. While the parties could have been more proactive in their disclosures to ALJ Ravandi, the actions do not establish grounds to shift OAH's costs to the parties or their legal counsel.

On August 29, 2016, the parties were informed that the case would be heard anew by an ALJ other than ALJ Ravandi. Following a discussion with the parties new hearing dates were set and are set out below.

ORDER

1. The Order to Show Cause is vacated.

2. The hearing in this matter is set for September 20 through September 22, 2016, and September 27 through September 29, 2016, beginning at 9:30 a.m. on September 22, 2016.

DATE: August 31, 2016

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BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings