BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040294
v.	ORDER DENYING STUDENT'S MOTION TO COMPEL AS MOOT, AND DENYING REQUEST FOR SANCTIONS
ROSEDALE UNION ELEMENTARY SCHOOL DISTRICT.	

On May 7, 2017, Student filed with the Office of Administrative Hearings a motion to compel a response by District to his complaint. Student also requested sanctions and a continuance of the due process hearing. District filed an opposition to the motion to compel and for sanctions, arguing the motion was moot because District served and filed its response on May 11, 2017. The parties argued their positions at the prehearing conference held on May 22, 2017. For the reasons discussed below, the motion to compel is moot, Student's motion for sanctions is denied, and the request for continuance is addressed in the Order following the prehearing conference on May 22, 2017.

LEGAL AUTHORITIES

The IDEA requires a school district to respond to a parent's due process complaint within 10 days. 20 U.S.C. § 1415(c)(2)(B)(i)(I).

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. 1, § 1040; 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 District's failure to file a timely response may result in OAH shifting the cost of a delay in the due process hearing to the District, upon a showing of prejudice by Student. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 852 F.3d 840, 851 (*M.C.*).) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) [1]

[1] Section 3088 refers to "presiding hearing officers." However, the ALJ presiding over the hearing is the presiding officer. Government Code section 11405.80 states: "Presiding officer means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding." This section makes clear that an ALJ who presides in an adjudicative proceeding is the "presiding

DISCUSSION AND ORDER

Student relied on *M.C., supra*, 852 F.3d at p. 851, arguing OAH is mandate" by *M.C.* to automatically award sanctions because District did not timely file its response to the complaint. District disagreed that sanctions are mandated.

The Ninth Circuit in *M.C.* did not mandate sanctions without evidence of more. The Ninth Circuit remanded the issue of cost-shifting to the District Court to determine, through additional evidence, whether Student had suffered prejudice as a result of District's failure to timely file an answer to the due process complaint.

Here, Student filed his motion to compel one month after filing his complaint. Student's counsel asserted she spent three hours at $400 an hour to prepare the motion to compel. However, Student's counsel also requested a continuance of the hearing during the prehearing conference, claiming she had a conflict with an ongoing dependency court hearing. Based upon the request for continuance, and the timing of District's answer, Student did not establish that he suffered any prejudice that would justify an award of sanctions or shifting of costs.

Both parties requested continuances and therefore Student's request for continuance is addressed in the Order following the May 22, 2017 prehearing conference.

ORDER

1. Student's motion to compel is moot.

2. Student's request for sanctions is denied.

3. Student's request for continuance is addressed in OAH's Order following the May 22, 2017 prehearing conference.

DATE: May 22, 2017

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

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officer," a point confirmed in *Wyner v. Manhattan Beach Unified Sch. Dist., supra,* 223 F. 3d at page 1029, where the court stated, "Clearly, § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."