

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

IRVINE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2026041102

OAH CASE NUMBER 2026021131

NOTICE OF NO COST SHIFTING

SEPTEMBER 10, 2026

On August 17, 2026, the office of Administrative Hearings, or OAH, issued an Order to Show Cause as to why OAH's expenses incurred after the time the parties executed a settlement agreement and failed to timely file a notice of settlement should not be shifted to the parties. Both parties filed responses to the Order to Show Cause on August 20, 2026.

In certain circumstances, an ALJ 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 v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly [Cal. Code Regs., tit. 5] § 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).)

With prior approval from the General Counsel of the California Department of Education, an ALJ 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).) "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.)

The parties' attorneys shall be cognizant that the State Bar Act and the Rules of Professional Conduct apply to proceedings before the Office of Administrative Hearings. OAH is a "court" within the meaning of Business and Professions Code section 6103, which authorizes sanctions for an attorney's dereliction of duties. (*Matter of Moriarty* (Cal. Bar Ct., Apr. 20, 2017) 5 Cal. State Bar Ct. Rptr. 511, 522) Under rule 3-110(a) of the Rules of Professional Conduct, "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Attorneys have a fiduciary duty to their clients to "maintain adequate management and accounting procedures for the proper operation of a law office" (*In re Valinoti* (Cal. Bar Ct., Dec. 31, 2002) 2002 WL 31907316, at p. 15; 03 Cal. Daily Op. Serv. 1322002.) "At a minimum, respondent

was required to develop and maintain procedures for . . . calendaring court hearings and filing deadlines [and] tracking court hearing dates and filing deadlines to insure they are not missed" (*Ibid.*)

Both parties' responses to the Order to Show Cause included declarations made by the parties' respective attorneys. Taken together, the declarations establish that:

- The parties finalized settlement in the consolidated cases, and obtained all signatures thereon, after 10:00 PM on Monday, August 10, 2026, the evening before hearing.
- The following morning, the parties worked to draft, sign, and file a Joint Notice of Settlement that Student's counsel filed with OAH at 9:19 AM, 11 minutes before the start of hearing at 9:30 AM.

This filing did not become a part of the administrative record, and thus was not viewable by the ALJ, until 10:00 AM, well after the commencement of hearing. An individual from Irvine's counsel's office also left a voice message with OAH at 10:24 AM, informing OAH of the settlement. This message came almost an hour after the start of hearing, and did not become notated into the administrative file until 10:35 AM.

Both parties argue that OAH's costs should not be shifted to the parties. Student's attorney explained that she was on a flight until 12:11 AM the morning of hearing, which meant that the earliest she could have notified the OAH hotline of completed settlement was the same day as hearing.

Irvine's attorney believed that a call notifying OAH of settlement should occur only once a notice of settlement, along with signatures on the settlement agreement, were filed with OAH.

The August 3, 2026, Order Following PHC states:

- The parties must inform OAH immediately if they reach a settlement agreement or otherwise resolve the dispute before the scheduled hearing... If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties must leave a voicemail message regarding the settlement at (916) 274-6035.
- Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed settlement agreement has been received and processed by OAH... If the matter settles subject to board approval, in addition to the signed signature page of the settlement agreement, the parties must provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

The PHC Order contains two separate directives that the parties have conflated: First, the parties have an obligation to notify OAH, through settlement hotline, once settlement is complete. This ensures that the ALJ assigned to the matter will cease incurring additional tax payer fees for hearing preparation.

The failure to notify the court and opposing counsel of the intent not to appear can be sanctionable conduct. In *Mungo v. UTA French Airlines* (1985) 166 Cal.App.3d 327, an attorney requested a trial continuance that was denied. The attorney appeared at trial and again requested a continuance, and, when that request was denied, dismissed the case. The appellate court found that counsel had the responsibility not to lead the court, as well as opposing counsel, to believe that there would be a trial on the day scheduled, and such conduct indicated bad faith. (*Id.*, at p. 333.)

Second, the parties have an obligation to file documentation of settlement, including the date of the next board meeting if the settlement is subject to board approval. This second obligation is required to vacate hearing dates. In this consolidated matter, both parties bore an independent obligation to notify OAH of the agreement. Had the parties notified the OAH hotline of settlement, even after midnight, OAH could have avoided the ALJ fees incurred the morning of hearing. As was the case here, it is not uncommon for an ALJ to continue hearing preparation up to the time the hearing commences.

After having considered the attorney declarations by both parties, OAH does not infer subjective bad faith from the attorneys' failure to call the settlement line as soon as settlement was complete. This Notice does, however, serve as actual notice to the parties' attorneys of their obligation to do so moving forward, and to approach OAH with the same respect and fidelity afforded to Federal and State courts.

A handwritten signature in cursive script that reads "Claire Yazigi".

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings