BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018010012 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

On December 28, 2017, Student filed with the Office of Administrative Hearings a request for a due process hearing naming Los Angeles Unified School District. On February 1, 2018, OAH granted the parties' joint request to set mediation for 9:00 a.m., on February 22, 2018; and continued the prehearing conference and due process hearing to agreed dates after the mediation.

On February 22, 2018, a mediator traveled to District's office to conduct the mediation. District's representative was present for the mediation. Neither Student's counsel, Mr. Hamlet Yarijanian, nor his client attended. Mr. Yarijanian was contacted and informed OAH that he did not have the mediation on his calendar and could not reach his client.

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 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.)

ORDER TO SHOW CAUSE

The parties' joint request for mediation on February 22, 2018, was signed by Student's representative and the OAH order granting the request was sent to Student's

attorney. Student's attorney stated he did not have the February 22, 2018, mediation on his calendar. Similarly, the week before, on February 14, 2018, Student's attorney failed to appear for a mediation he requested in OAH case number 2017120828. On February 22, 2018, Student's attorney called OAH and informed OAH that the February 14, 2018, mediation in case number 2017120828 was not on his calendar.

The attorney's failure to appear at the mediation in this matter caused the assigned mediator to unnecessarily travel to the District's offices. Therefore, Student is ordered to show cause why Student's attorney, Mr. Yarijanian, should not be required to pay OAH's expenses as to the February 22, 2018, mediation.

Student is ordered to file a written response with OAH by no later than 5:00 p.m. on March 7, 2018. A copy of the response shall be served upon District. District is not expected to file a written response. Student's response shall address why Student's attorney did not appear at the mediation despite having requested the mediation date. Student's written response shall also address why OAH should not order Student to pay OAH's expenses for sending a mediator to the scheduled February 22, 2018 mediation and OAH travel expenses related to this mediation, and for this order to show cause.

A hearing on this order to show cause hearing shall take place telephonically on March 9, 2018, at 11:00 a.m. Failure of Student's representative to appear telephonically at the hearing on the order to show on March 9, 2018, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Student Should be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on March 7, 2018.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, March 9, 2018.

DATE: February 28, 2018

DocuSigned by:
Marian H. Tully
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MARIAN H. TULLY
Presiding Administrative Law Judge
Office of Administrative Hearings