BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

WEST COVINA UNIFIED SCHOOL DISTRICT ,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2025040640

ORDER FOLLOWING PREHEARING CONFERENCE AND SETTING ORDER TO SHOW CAUSE HEARING REGARDING CASE DISMISSAL AND PAYING COSTS FOR FAILURE TO APPEAR AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

APRIL 25, 2025

On April 25, 2025, Administrative Law Judge Cynthia Fritz, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

West Covina Unified School District's attorney of record, Alefia Mithaiwala, did not appear on West Covina's behalf. Parent did not appear on Student's behalf.

If the parent and local education agency have not resolved the due process complaint within 30 days of the receipt of the complaint, OAH is required to issue a decision within the next 45 days, unless a continuance is granted for good cause. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.51; Ed. Code, § 56502, subd. (f).)

An ALJ presiding over a hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"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).) "Whether an action is frivolous is governed by an objective standard: any reasonable attorney would agree it is totally and completely without merit [citations]." (*Levy v. Blum* (2001) 92 Cal.App.4th 625, 635.) In addition, there must be a showing of improper purpose. (*Ibid.*) A finding of "bad faith" does not require a determination of evil motive. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

ORDER TO SHOW CAUSE HEARING REGARDING CASE DISMISSAL

Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing or resolution. West Covina's counsel's failure to participate put the timely resolution of this matter in doubt. As the attorney of record, Attorney Mithaiwala is responsible for understanding and following OAH's procedures, including making all required appearances. Failure to do so may result in the complaint being dismissed and/or paying costs. Parties cannot and should not assume that a request for continuance will be granted. Thus, the parties were expected to appear for the PHC. Because this is a school district filed case and the attorney for the school district did not appear for the PHC, an Order to Show Cause Hearing regarding case dismissal and paying costs is set for May 9, 2025, at 10:00 AM.

Additionally, Attorney Mithaiwala must file a statement with OAH, and serve it on Parent, explaining why there was no appearance at the April 25, 2025, PHC, no later than 5:00 PM on May 7, 2025. Parent may, but is not required, to file a responsive statement with OAH and serve it on Attorney Mithaiwala, no later than 5:00 PM on May 8, 2025.

The parties are ordered to appear by videoconference on May 9, 2025, at 10:00 AM, and West Covina's counsel must show cause why this matter should not be dismissed and/or to pay costs for failure to appear at the April 25, 2025, PHC.

If West Covina does not appear at the Order to Show Cause Hearing on May 9, 2025, at 10:00 AM, West Covina's complaint will be considered abandoned and will be dismissed for failure to prosecute, unless otherwise ordered. If good cause is shown why this matter should not be dismissed, the PHC will immediately follow the Order to Show Cause hearing as set forth below.

PHC AND HEARING CONTINUANCE

A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including:

- the proximity of the hearing date;
- previous continuances or delays;
- the length of continuance requested;
- the availability of other means to address the problem giving rise to the request;
- prejudice to a party or witness as a result of a continuance;
- the impact of granting a continuance on other pending hearings;
- whether trial counsel is engaged in another trial;
- whether the parties have stipulated to a continuance;
- whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance.

(Cal. Rules of Court, rule 3.1332(d).)

Because West Covina did not appear at the April 25, 2025, PHC, the ALJ granted a brief hearing continuance to allow West Covina to show cause why the case should not be dismissed and/or to pay costs for lack of prosecution. All current dates are vacated. The PHC and hearing are continued as follows.

The PHC is continued to May 9, 2025, at 10:00 AM.

The hearing will take place on May 20, 21, and 22, 2025, and continue day to day at the discretion of the ALJ. The hearing will begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. PHC statements and motions are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ORDER TO SHOW CAUSE HEARING, PHC, AND HEARING LOCATION

OAH is authorized to conduct order to show cause hearings, PHCs, and due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd.

(g).) OAH will conduct the Order to Show Cause Hearing, PHC, and due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings