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. 2018070687 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

On July 16, 2018, Student filed with the Office of Administrative Hearings a request for a due process hearing naming Los Angeles Unified School District. On August 22, 2018, OAH granted the parties' joint request for continuance, setting a mediation for 9:00 a.m., on October 30, 2018.

On October 30, 2018, the assigned mediator traveled to the Los Angeles Unified's office. Student and Student's attorney, George Crook, did not appear for the mediation. When contacted as to his absence, Mr. Crook replied that he did not have the mediation on his calendar. OAH subsequently canceled the mediation.

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

ORDER TO SHOW CAUSE

Student is ordered to show cause why Student's attorney, George Crook, should not be required to pay OAH's costs as to the October 30, 2018 mediation, which includes OAH travel expenses related to the mediation. **Student is ordered to file a written response with OAH by no later than 5:00 p.m. on November 19, 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 asking for and agreeing to the mediation date in the continuance request. **Student's written response shall address why OAH should not order Student to pay OAH's expenses for sending a mediator to the scheduled October 30, 2018 mediation and OAH travel expenses related to this mediation, and for this order to show cause.**

The order to show cause hearing shall take place telephonically on November 26, 2018, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on November 26, 2018, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Student Should Not be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on Monday, November 19, 2018.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Monday, November 26, 2018.

IT IS SO ORDERED.

DATE: November 09, 2018

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings