BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HOLLISTER SCHOOL DISTRICT.	OAH Case No. 2017080504 ORDER AFTER DUE PROCESS HEARING, GRANTING CONTINUANCE OF MEDIATION, PREHEARING CONFERENCE, AND DUE PROCESS HEARING, AND ORDER TO SHOW CAUSE AS TO WHY DISTRICT SHOULD NOT BE ORDERED TO PAY COSTS FOR FAILING TO APPEAR FOR PREHEARING CONFERENCE

On September 25, 2017, a telephonic prehearing conference was held before Administrative Law Judge Tiffany Gilmartin, Office of Administrative Hearings. Mother, appeared on behalf of Student. The ALJ made four attempts to reach Hollister School District's Special Education Director, Richard Lust. Voicemails were left on both Mr. Lust's work and mobile phones. A message was also left with District staff from OAH's staff.

When PHC began, Mother stated that she had sent a request for continuance to Mr. Lust on Friday, September 22, 2017 at approximately 11 a.m. asking for Hollister's consent to continue the PHC scheduled for September 25, 2017. Mother believed that Hollister was going to forward the document to OAH. No continuance request was received by OAH, nor was Mr. Lust available for the scheduled PHC.

APPLICABLE LAW

Continuance

If the parent and local education agency have not resolved the due process complaint within 30 days of 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).)

Order to Show Cause

Under 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. 5 § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 [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 subsequent 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).)

DISCUSSION

Continuance

Mother made an oral motion for continuance of the mediation, prehearing conference, and due process hearing at the beginning of the PHC. The ALJ scheduled the following dates: Mediation, November 7, 2017 at 9:30 a.m., Prehearing Conference, November 13, 2017 at 1 p.m., Due Process Hearing, November 21, 2017 at 9:30 a.m. in a room to be provided by Hollister School District, and continuing day-to-day, Monday through Thursday therafter at the discretion of the ALJ. The mediation and hearing shall take place at the District's offices located at 2690 Cienega Road, Hollister, California. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

Order to Show Cause

Mr. Lust, or another Hollister representative, is ordered to file a sworn declaration with OAH no later than 5 p.m. on September 28, 2017, explaining his failure to appear at the PHC on September 25, 2017 and why he should not be ordered to pay the costs incurred by the OAH as a result of his failure to appear at the PHC. A telephonic order to show cause hearing shall be held at 1 p.m. on September 29, 2017, at which time Mr. Lust will be permitted to present any other information to explain his actions. Hollister shall serve Mother with a copy of the sworn declaration. Mother is not expected to file a written response or appear. If Mother wishes to appear, she should notify OAH in writing and she will be included in the telephonic order to show cause hearing on September 29, 2017.

Mr. Lust's response will address why he did not appear for the PHC despite contact made by OAH's staff on September 21, 2017. Mr. Lust's response shall address why OAH should not order Mr. Lust to pay OAH's expenses for convening a PHC.

ORDER

1. An order to show cause hearing as to why Hollister District should not be ordered to pay expenses for failing to appear at the PHC on September 25, 2017, is hereby issued. Mr. Lust or another Hollister representative must file a sworn declaration with a response no later than 5:00 p.m. on Thursday, September 28, 2017, which shall be served upon Mother.

2. A telephonic order to show cause hearing shall be convened at 1 p.m. on Friday, September 29, 2017. Mother shall notify OAH if she wishes to appear.

3. Mother's request for continuance is granted. The dates will be as follows: Mediation, November 7, 2017; PHC: November 13, 2017; DPH: November 21-22, 2017 starting at 9:30 on first day.

IT IS SO ORDERED.

DATE: September 25, 2017

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings