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. 2017050757 ORDER TO SHOW CAUSE WHY LOS ANGELES UNIFIED SCHOOL DISTRICT SHOULD NOT BE ORDERED TO PAY EXPENSES

On May 15, 2017, Student filed a request for a due process hearing with the Office of Administrative Hearings naming Los Angeles Unified School District. On June 28, 2017, OAH granted the parties joint request for a continuance, setting the mediation for 1:30 p.m., on July 13, 2017. On July 5 and 6, 2017, OAH confirmed the mediation with both parties.

On July 13, 2017, the assigned mediator traveled to the District's office, and was informed by District upon his arrival that counsel for Student, Elizabeth Curtis, had emailed District the evening of July 12, 2017, to cancel the mediation, but did not contact OAH to cancel the mediation. On July 13, 2017, OAH issued an order to show cause as to Student regarding Student's counsel conduct.

On July 13, 2017, Student's counsel responded, which included a declaration from counsel and copies of emails between her and District, and a declaration from her assistant, which show that the District representative, Ernie Campos, contacted Ms. Curtis' office the late afternoon of July 12, 2017, to cancel the mediation for the next day. In the subsequent email chain that occurred after 5:00 p.m., there appeared to be some confusion as to who would cancel the mediation scheduled for the next day.

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

District representative apparently contacted Student's counsel to cancel the mediation, but did not contact OAH, which caused the assigned mediator to unnecessarily travel to the District's offices. Therefore, District is ordered to show cause why District should not be required to pay OAH's costs as to the July 13, 2017 mediation, which includes OAH travel expenses related to the mediation. **District is ordered to file a written response with OAH by no later than 5:00 p.m. on July 18, 2017,** by facsimile transmission to (916) 376-6319. A copy of the response shall be served upon Student. Student is not expected to file a written response.

District's response shall address why District's representative did not contact OAH to inform OAH of the canceled mediation when District's representative informed Student's legal counsel of the request to cancel the mediation. **District's written response shall address why OAH should not order District to pay OAH's expenses for sending a mediator to the scheduled July 13, 2017 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 July 21, 2017, at 2:00 p.m. Failure of Districts representative to appear telephonically at the order to show cause hearing on July 21, 2017, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why District Should be Ordered to Pay Expenses is hereby issued. District must file a response no later than 5:00 p.m. on Wednesday, July 18, 2017.

2. A telephonic order to show cause hearing shall be convened at 2:00 p.m. on Friday, July 21, 2017.

DATE: July 14, 2017

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