BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ALTOS SCHOOL DISTRICT.	OAH Case No. 2017051355 ORDER TO SHOW CAUSE WHY STUDENT'S COMPLAINT SHOULD NOT BE DISMISSED, CONTINUING PREHEARING CONFERENCE AND TENTATIVELY GRANTING DISTRICT'S REQUEST FOR CONTINUANCE.

On May 30, 2017, Student's Parent filed a request for due process hearing on behalf of Student, naming Los Altos School District as respondent. On May 31, 2017, the Office of Administrative Hearings issued a scheduling order, setting this matter for prehearing conference on July 17, 2017 at 3:00 p.m.. This Prehearing Conference was scheduled to be convened by Administrative Law Judge Penelope Pahl, Office of Administrative Hearings.

Laurie Reynolds, Attorney at Law, appeared on behalf of Los Altos School District. Three attempts were made to contact Student's attorney Peter Sturges: one at 3:00 p.m., one at 3:05 p.m. and one at 3:17 pm. Messages were left by the undersigned on Mr. Sturges' voice mail each time a call was placed with the final message informing Mr. Sturges that an order would be issued scheduling a hearing on an Order to Show Cause as to why the case should not be dismissed.

APPLICABLE LAW

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.)

DISCUSSION

Given the short time frames applicable to due process hearings, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing or resolution. Student's counsel's non-compliance with procedure and failure to participate put the timely resolution of this matter in doubt. As the attorney of record, Mr. Sturges is responsible for understanding and following OAH's procedures, including making all required appearances.

Student is ordered to show cause, at a telephonic hearing on Friday, July 21, 2017, at 1:00 p.m., as to why this matter should not be dismissed for failure to participate, prosecute or advance the matter. Should Student provide adequate justification to overcome dismissal at the hearing on the order to show cause, the PHC shall proceed immediate following the OSC hearing.

Mr. Sturges is ordered to file a declaration with OAH no later than 3:00 p.m. on July 20, 2017, explaining his failure to appear at the PHC on July 17, 2017, and stating why the case should not be dismissed for failure to appear at the scheduled Prehearing Conference. Failure of Mr. Sturges to submit a declaration and appear at the hearing on the Order to Show Cause may result in a dismissal of this matter without further notice.

The PHC is continued and shall immediately follow the order to show cause hearing. Los Altos' attorney may participate in the order to show cause hearing, but is not ordered to do so. Los Altos' attorney must give written notice to OAH advising of her intention to appear in this regard. Otherwise, Los Altos' attorney shall be contacted telephonically by OAH following the order to show cause hearing.

The parties are advised that Los Altos' motion for continuance is tentatively granted. If the case is not dismissed, arguments shall be heard as to the date to which the case shall be continued during the Prehearing Conference.

ORDER

1. Student's attorney shall file a declaration under penalty of perjury explaining his failure to appear at the PHC on July 17, 2017, no later than 3:00 p.m. on July 20, 2017.

2. An order to show cause hearing shall be convened telephonically by OAH at

1:00 p.m. on July 21, 2017. Student's attorney is ordered to appear.

3. The PHC is continued to July 21, 2017, and shall begin immediately following the order to show cause hearing should Student's attorney provide an acceptable explanation for his failure to appear at the PHC on July 17, 2017.

4. Los Altos' motion for continuance is tentatively GRANTED pending the outcome of the hearing on the OSC. If the case is not dismissed, arguments shall be heard during the Prehearing Conference as to the date to which the case shall be continued.

IT IS SO ORDERED.

DATE: July 18, 2017

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings