BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. THE LEARNING CHOICE ACADEMY.	OAH Case No. 2017090725 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

On September 15, 2017, Student filed with the Office of Administrative Hearings requests for a due process hearing for siblings naming The Learning Choice Academy.[1] On October 1, 2017, OAH granted the parties joint request for continuance, setting the mediation for 9:30 a.m., on December 5, 2017, for OAH Case No 2017090725, and at 1:30 p.m. the same day for OAH Case No. 2017090740.

On December 5, 2017, the assigned mediator traveled to The Learning Choice Academy's office. The Learning Choice Academy attorney and representative were present at 9:30 a.m. for the mediation. Student's attorney, Thomas Nelson, and Parent did not appear for the mediation. Mr. Nelson was contacted and stated that he did not realize that the mediation was scheduled for that day, and contacted Parent who was not available to attend either mediation. OAH subsequently canceled both mediations.

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

[1] Students also named San Diego Unified School District, who was dismissed as a party in both matters.

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's attorney apparently did not calendar or forgot about the mediations date, which caused the assigned mediator to unnecessarily travel to The Learning Choice Academy's offices. Therefore, Student is ordered to show cause why Student's attorney, Mr. Nelson, should not be required to pay OAH's costs as to the December 5, 2017 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 December 14, 2017**. A copy of the response shall be served upon The Learning Choice Academy. The Learning Choice Academy is not expected to file a written response.

Student's response shall address why Student's attorney did not appear at the mediation despite to 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 December 5, 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 December 18, 2017, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on December 18, 2017, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Student Should be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on Thursday, December 14, 2017.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Monday, December 18, 2017.

DATE: December 11, 2017

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