BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT AND CAMINO NUEVO ACADEMY #4.	OAH Case No. 2017061295 ORDER TO SHOW CAUSE WHY STUDENT SHOULD NOT BE ORDERED TO PAY EXPENSES

On June 27, 2017, Student filed with the Office of Administrative Hearings a request for a due process hearing naming Los Angeles Unified School District and Camino Nuevo Academy #4. On July 24, 2017, OAH granted the parties joint request for continuance, setting the mediation for 9:00 a.m., on September 13, 2017. On September 7, 2017, OAH confirmed the mediation with an assistant for the Law Offices of Jennifer Chang.

On September 13, 2017, the assigned mediator traveled to the District's office. The District representative was present for the mediation. Ms. Chang did not appear for the mediation. Ms. Chang was contacted and stated that she had confused the mediation date and thought it was 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

Student's attorney apparently confused mediations dates, which caused the assigned mediator to unnecessarily travel to the District's offices. Therefore, Student is ordered to show cause why Student's attorney, Ms. Chang, should not be required to pay OAH's costs as to the September 13, 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 September 19, 2017**. A copy of the response shall be served upon District and Camino Nuevo. District and Camino Nuevo are 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 and her office confirming her attendance. **Student's written response shall address why OAH should not order Student to pay OAH's expenses for sending a mediator to the scheduled September 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 September 22, 2017, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on September 22, 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 Tuesday, September 19, 2017.

2. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, September 22, 2017.

DATE: September 15, 2017

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