BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022090128

# ORDER TO SHOW CAUSE AS TO WHY THIS MATTER SHOULD NOT BE DISMISSED, STUDENT'S COUNSEL SHOULD NOT BE SANCTIONED FOR NON-APPEARANCE, AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

DECEMBER 2, 2022

On September 6, 2022, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearing, called OAH, naming Los Angeles Unified School District. On October 5, 2022, OAH granted the parties' request to mediate the case on November 16, 2022, continued the prehearing conference, called PHC, to December 2, 2022, at 10:00 AM, and set the due process hearing for

December 13, 2022. On November 15, 2022, Student's counsel cancelled mediation less than 24 hours before the mediation was scheduled and after a mediator and interpreter were assigned.

Although OAH's rules require that each party file a written PHC statement three business days before the PHC, neither party filed a PHC statement nor did either party make any attempt to inform OAH about the status of the case before the PHC commenced.

The undersigned administrative law judge convened the PHC on Friday, December 2, 2022, at 10:00 AM. Student's attorney, Jennifer Chang, failed to appear at the designated time. The undersigned waited until 10:10 AM for Chang to appear and participate in the PHC but Chang made no appearance. Attorney Maria Cruz timely appeared for the PHC on behalf of Los Angeles Unified School District and represented that a settlement had been reached between the parties and it was awaiting signatures. No dismissal had been filed in this matter at the time the PHC commenced.

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).)

The administrative law judge 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).)

Given the short time frames applicable to this case, 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 the procedures and the failure to participate in the PHC put the timely resolution of this matter in doubt. As the attorney of record, Chang is responsible for understanding and following OAH's procedures, including making all required appearances. Failure to do so may result in this matter being dismissed, sanctions, and shifting costs. Here, no dismissal was filed in this matter at the time of the PHC. Thus, Chang was required to appear at it.

Chang is ordered to file a declaration with OAH no later than 5:00 PM on December 6, 2022, explaining her failure to appear at the PHC on December 2, 2022, and why Chang should not be ordered to pay the costs of Los Angeles Unified School District, and OAH, and dismissal of this matter because of the failure to appear at the PHC. A videoconference order to show cause hearing will be held at 1:00 p.m. on December 9, 2022, at which time Chang will be permitted to present any other information to explain her actions. Failure of Chang to submit a declaration and appear at the order to show cause hearing may result in sanctions, cost shifting, and dismissal.

The PHC is continued and will immediately follow the order to show cause hearing. Los Angeles Unified School District's attorney may participate in the order to show cause hearing but is not required to do so. However, if Los Angeles Unified School District wishes to seek cost shifting, the attorney must file a declaration by December 6, 2022, at 5:00 PM and appear at the order to show cause hearing detailing such costs. Additionally, given Chang's non-appearance at the PHC, the current due process hearing dates are vacated and set for December 20, 21, and 22, 2022.

ORDER

1. Student's attorney must file a declaration under penalty of perjury by December 6, 2022 at 5: 00 PM, explaining the failure to appear at the December 2, 2022 PHC, and why this matter should not be dismissed, sanctions imposed, and cost shifted.
2. An order to show cause will be convened by videoconference on December 9, 2022, at 1:00 PM. Student's attorney is ordered to appear.
3. The PHC will immediately follow the December 9, 2022 order to show cause hearing at or around 1:30 PM should Student's attorney provide an acceptable explanation for the failure to appear at the December 2, 2022 PHC.
4. The due process hearing is set for December 20, 21, and 22, 2022.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings