BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

GOLDEN PLAINS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019040042

ORDER DENYING MOTION FOR SANCTIONS

On June 25, 2019, Golden Plains Unified School District filed with the Office of Administrative Hearings, referred to as "OAH", a motion to strike portions of Student's closing brief. On June 27, 2018, Student filed an opposition. OAH deemed Golden Plains' motion to be a motion to exclude evidence outside the record. On July 1, 2019, OAH granted Golden Plains' motion.

Embedded within Student's June 27, 2019 opposition is a request for sanctions. On July 1, 2019, Golden Plains filed an opposition to Student's request for sanctions.

APPLICABLE LAW

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to the Office of Administrative Hearings. (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."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) 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, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).)

An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "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).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

Here, Student argues that Golden Plains' engaged in frivolous tactics. Specifically, Student alleges Golden Plains violated Education Code section 56505.1, subdivision (f) and the Order Following Prehearing Conference issued on May 20, 2019, by failing to "present any evidence" at hearing and instead relying on Student's evidence without his permission. For these alleged frivolous tactics, Student requests OAH strike Golden Plains' closing brief in its entirety. Student also requests an unspecified monetary sanction because of Golden Plains' filing of a motion to exclude evidence. Student claims this filing was without merit and caused Parent additional expense.

Student's motion fails as he has not identified any bad faith actions or tactics by Golden Plains that are frivolous or solely intended to cause unnecessary delay. The law does not preclude Golden Plains from relying on evidence proffered by Student at hearing. Student provides no legal basis for striking Golden Plains' closing brief. In addition, there is no basis for sanctioning Golden Plains for filing a motion, which OAH granted, to exclude evidence Student erroneously included in his closing brief in contravention of the undersigned's instructions at hearing. Accordingly, Student's request for sanctions is denied.

ORDER

Student's motion for sanctions is denied.

IT IS SO ORDERED.

DATE: July 5, 2019

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings