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 No. 2017080500 ORDER DENYING MOTION FOR SANCTIONS

On August 9, 2017, Parents on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, naming Los Angeles Unified School District.

On August 18, 2017, OAH granted Student's request for stay put. The Stay Put Order required District to continue funding Student's placement and services as set forth in a February 3, 2016 settlement agreement, during the pendency of this matter.

On August 29, 2017, Student filed a motion for sanctions against District, based upon District's failure to comply with the Stay Put Order. On September 7, 2017, District opposed the motion.[1] Student replied to the opposition on September 8, 2017.

APPLICABLE LAW

In certain circumstances, an Administrative Law Judge 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."].)

The ALJ 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).)

[1] Student's objection to District's opposition, because it was submitted more than three days after Student's request for sanctions, is denied.

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).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "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, District does not dispute that it is obligated to comply with OAH's Stay Put Order, nor does it dispute its obligation to fund the placement and services set forth in the February 3, 2016 settlement agreement. Per that agreement, Parent and District agreed that Student's stay put placement included placement at the Academy for Advancement of Children with Autism, a nonpublic school, with transportation, counseling, adapted physical education, behavior intervention, and extended school year services.

Per the pleadings, District has continued to fund the placement and services set forth in the agreement, with the exception of transportation. District admits that it has had difficulty obtaining a transportation provider for Student, and has offered to reimburse Parents' mileage costs until it has located a provider. For that reason, Student complains that District has violated OAH's Stay Put Order, for which District should be sanctioned.

However, the February 2016 agreement provides that, in the event that District's transportation agency is unable to provide services, District will locate an alternative provider within 14 days and reimburse Parents for transportation costs, at 55 cents per mile, during that interim. Consistent with the agreement, District has attempted to secure a direct transportation provider for Student, and has offered to reimburse Parents mileage costs during the interim until it has secured a provider. It is not enough to find bad faith or frivolous tactics on the part of District, merely because that interim exceeds 14 days. For those reasons, Student's request for sanctions is denied.[2]

[2] This order does not prevent Student from filing a subsequent motion if District fails to comply with other parts of OAH's order, or if District fails to continue its efforts to obtain

ORDER

Student's motion for sanction is denied.

DATE: September 18, 2017

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Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

a direct transportation service for Student. Further, Student may seek compensatory education for District's failure to provide transportation services in the pending complaint.