BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100579

ORDER DENYING MOTION FOR SANCTIONS

NOVEMBER 14, 2022

On October 20, 2022, Student filed a request for due process, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Sacramento City Unified School District as respondent. On October 26, 2022, Sacramento City filed a motion for sanctions. Student filed a brief opposing the sanctions on October 31, 2022. Sacramento City replied to Student's opposition on November 1, 2022.

Sacramento City asserts that this is the third complaint filed on behalf of Student since June 2, 2022 following two prior complaints that were dismissed when Student failed to amend following the complaints being determined to be insufficient. Sacramento City also contends that Ms. Bayne and her non-attorney employee Mr. Peters are practicing outside the bounds of the ethics rules, and, in Mr. Peter's case, practicing law without a license.

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.)

Sacramento City fails to demonstrate "actions or tactics" in this case that are totally without merit and are, therefore, sanctionable. This is a new complaint. At the time this motion was filed, Sacramento City had not filed a notice of insufficiency as to this complaint and offered no authority limiting a Student's right to file a new complaint after another has been dismissed due to failure to amend following a determination of insufficiency. While Sacramento City's motion for sanctions asserts that "petitioner has demonstrated absolutely no intent to prosecute or resolve this matter in good faith nor in accordance with the established OAH procedures pursuant to state and federal law," this complaint has only been pending for 12 days. Sacramento City has presented no evidence that Student does not intend to pursue the claims filed in this complaint.

The gravamen of Sacramento City's contentions appear to be its concerns that the cumulative conduct described constitute alleged unauthorized practice of law by Mr. Peters and alleged ethical violations by Ms. Bayne. However, Sacramento City offers no legal authority establishing OAH jurisdiction over these grievances. Rather, these claims are addressed by the California State Bar or the State Attorney General's office.

Sacramento City's request for sanctions is denied.

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings