BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FOLSOM-CORDOVA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024110401

ORDER DENYING MOTION FOR SANCTIONS

FEBRUARY 13, 2025

On December 21, 2024, Folsom-Cordova Unified School District filed with the Office of Administrative Hearings, called OAH, a motion to dismiss Student's due process hearing request for failure to prosecute, and a motion for sanctions. Folsom-Cordova Unified filed a declaration by Attorney Rebecca Diddams in support of the motions.

OAH held a due process hearing in this matter on December 31, 2024, and January 2, 7, 9, and 13, 2025. Attorney Michelle Wilkolaski represented Student. Parents attended all hearing days on Student's behalf.

Attorneys Diddams, Katherine Yoshida, and Anne Sherlock represented Folsom-Cordova Unified. Director of Special Education Aaron Storey attended all hearing days on Folsom-Cordova Unified's behalf.

On December 31, 2024, after considering the parties' arguments, OAH denied the motion to dismiss Student's due process hearing request for failure to prosecute. OAH permitted Student to file a response to the motion for sanctions, which Student filed on January 3, 2025. On January 6, 2025, Folsom-Cordova Unified filed an addendum to the motion for sanctions, supported by a declaration by Attorney Diddams.

In its motion for sanctions, Folsom-Cordova Unified contends Student's attorneys engaged in bad faith tactics. Specifically, Folsom-Cordova Unified argues Student's attorneys failed to timely file a prehearing conference statement, failed to timely upload exhibits into the electronic evidence program, and failed to meaningfully participate in a meet and confer. Folsom-Cordova Unified claims it expended unnecessary time and resources to prepare for hearing, file a response to clarify issues for hearing, coordinate a meet and confer with Student's attorney, and file its motions for dismissal and sanctions. Therefore, Folsom-Cordova Unified seeks an order shifting the cost of its attorney's fees in the amount of $5,031.50, and OAH's expenses, to Student.

In response, Student contends its attorneys did not engage in bad faith tactics and a shifting in expenses is unwarranted. Student argues Folsom-Cordova Unified was not prejudiced by Student's untimely filing of her prehearing conference statement or uploading of exhibits. Further, Student argues Attorney Wilkolaski engaged in good faith efforts to meet and confer with Attorney Diddams to schedule witnesses.

In certain circumstances, an administrative law judge, called an 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).) 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.)

Here, Folsom-Cordova Unified's motion fails because only the ALJ who is presiding over the matter may place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) The ALJ in this matter declines to do so as such sanctions were not necessary to ensure an orderly and fair hearing. Further, the actions of Student's attorneys did not rise to a level of bad faith or frivolous tactics. The due process hearing proceeded in an orderly and timely manner. The parties collaborated to ensure necessary witnesses were available to testify with minimal disruption to the order of anticipated testimony. Accordingly, Folsom-Cordova Unified's motion for sanctions is denied.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings