BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

DEL NORTE COUNTY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024110598

VACATING THE JANUARY 31, 2025 ORDER TO SHOW CAUSE HEARING

JANUARY 30, 2025

On January 16, 2025, Vivian B. Randolph, attorney for Del Norte County Unified School District, filed ex parte communication, Del Norte's Request to Immediately Remove Administrative Law Judge Cara Lucier, with the Office of Administrative Hearings, called OAH, in this matter. This request did not contain a proof of service upon counsel for Student, Joshua Cruz. On January 16, 2025, OAH issued Notice of Receipt of Ex Parte Communication and provided counsel for Student, Joshua Cruz, with a copy of Del Norte's motion to remove ALJ Lucier.

The same date, OAH issued an Order to Show Cause as to Why Attorney Randolph Should be Ordered to Pay Expenses of OAH caused by Attorney Randolph's

failure to serve Attorney Cruz with a copy of Del Norte's challenge of ALJ Lucier. OAH gave Del Norte until January 23, 2025, to file a response, and Student until January 27, 2025, to file a written response, or Student's own request for sanctions for Del Norte's January 16, 2025 motion. Del Norte filed its response on January 22, 2025, and Student on January 27, 2025, which did not include a request for sanctions.

ORDER TO SHOW CAUSE

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).) As Attorney Randolph directed the recusal motion to ALJ Lucier's superiors, the Division Chief ALJ would be the presiding hearing officer over the January 16, 2025 request.

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).) Absent exceptional circumstances, a law firm is held jointly responsible for violations committed by its partners, associates, or employees. (Code Civ. Proc., § 128.5, subd. (f)(1)(C).)

"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.)

In this case, Attorney Randolph sought an order from the Presiding ALJ to remove ALJ Cararea Lucier on day six of the administrative hearing, which would necessitate starting the hearing from scratch. Attorney Randoph's motion contains derogatory assertions against both ALJ Lucier and Attorney Cruz regarding their conduct in the present administrative hearing. Attorney Randolph's motion did not include a declaration under penalty of perjury to support any of her contentions.

Attorney Randolph's conduct was substantially similar to the ex parte communication of the Sacramento City Unified School District's administrator in OAH Case No. 2015100577 in trying to influence the final outcome of a pending

administrative hearing. (*Order Shifting Costs From Office of Administrative Hearings and Student to Sacramento City Unified School District*, https://www.dgs.ca.gov/-/media/Divisions/OAH/Special-Education/SE-Orders-Page/Sanctions-and-Shifting-Costs/2015100577/2015100577-Order-Shifting-Costs-AccMod.pdf) However, in this matter, ALJ Lucier did not recuse herself from hearing the remainder of the case as Attorney Randolph's did not prejudice ALJ Lucier to such an extent that ALJ Lucier's recusal would be warranted.

Attorney Randolph attempts to explain her reasoning why she did not serve a copy of Del Norte's disqualification motion upon Student. OAH does have concerns about Attorney Randolph's explanation as she has appeared before OAH in special education matters for nearly 20 years and should know the legal requirements to serve a copy of any document filed with OAH on the other party. Attorney Randolph's complaint about the proceeding appears to be a common frustration of hers when a hearing appears to be proceeding in a matter that she dislikes. (*Monrovia Unified School District v. Student* (October 18, 2024) OAH Case Nos. 2024070979 and 2024030766, Order Denying Motion to Disqualify Administrative Law Judge.) If Attorney Randolph, or any party, has a general complaint against a hearing ALJ, that individual may file a complaint with OAH and not serve the other party after the Decision is issued and the matter closed with OAH.

Despite these concerns, it appears that Attorney Randolph understands her error in serving the January 16, 2025 disqualification request without serving a copy upon Attorney Cruz. While OAH has concerns about statements in Attorney Randolph's disqualification request, the Order to Show Cause only addressed the ex parte communication and its impact on this proceeding. As Attorney Randolph expressed

contrition and ALJ Lucier continued to hear this matter, the Order to Show Cause is vacated.

ORDER

1. The telephonic order to show cause hearing scheduled for January 31, 2025, is vacated.

IT IS SO ORDERED.

Peter Paul Castillo

Peter Paul Castillo
Division Chief Administrative Law Judge
Office of Administrative Hearings