BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100165

ORDER GRANTING MOTION TO AMEND COMPLAINT, DENYING MOTION FOR RECONSIDERATION OF DISMISSAL AS MOOT, AND DENYING REQUEST TO SHIFT COSTS

NOVEMBER 10, 2022

On October 6, 2022, Parent, on behalf of Student, filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Burbank Unified School District as respondent. On October 20, 2022, Burbank filed a motion to dismiss the complaint, asserting it was barred by a prior settlement agreement. That motion was denied on October 27, 2022.

On November 3, 2022, after close of business, Student filed a motion to amend the complaint; and Burbank filed a motion for reconsideration of the order denying its motion to dismiss the complaint, as well as a motion to shift costs to Student. All of these motions were deemed filed on November 4, 2022. On November 9, 2022, Burbank opposed the motion to amend the complaint.

MOTION TO AMEND

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The amended complaint asserts claims beginning October 22, 2022. Burbank opposes the motion on the grounds that the original complaint, which asserted claims prior to June 30, 2022, should have been dismissed when Burbank originally moved for dismissal. Burbank's argues that, as the original complaint should have been dismissed, there is no complaint to amend. Burbank makes several references to its motion for reconsideration of the order denying dismissal, in support of its opposition to allowing Student to amend his complaint.

Burbank offers no legal authority in support of the proposition that its disagreement with a prior order renders the order inoperative. At the time the motion to amend the complaint was filed, the complaint had not been dismissed. Therefore, there is a pending complaint which Student may move to amend.

The motion to amend was filed more than five days prior to the due process hearing. Therefore, it is timely and is granted.

MOTION FOR RECONSIDERATION

Burbank's motion for reconsideration is denied as moot. In this case, Student's motion to amend the complaint has been granted. As a result, the previously filed complaint is no longer operative. A new resolution period begins, and the time for resolving the issues in the new complaint are reset. (20 U.S.C. 1415(f)(1)(B); 34 C.F.R 300.510 (a) and (b); Ed. Code 56502(e).) Only the issues in the amended complaint are considered at hearing absent consent from the district. (20 U.S.C. 1415(f)3)(B); Ed. Code 56502(i).)

In light of this Order granting amendment, the original complaint Burbank sought to dismiss is no longer pending, and the issues raised in it will not be considered at hearing. Accordingly, Burbank's motion for reconsideration of the denial of the dismissal of the original complaint, is moot.

MOTION TO SHIFT COSTS

In certain circumstances, a Special Education Division administrative law judge, known as an ALJ, is authorized to shift expenses from one party to another. (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."].)

An ALJ may, "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.) However, the imposition of sanctions does require a showing that the actions were meritless *or* frivolous *and* that the action was pursued in bad faith. (*Campbell v. Cal Gard Sur. Services, Inc.* (1998) 62 Cal. App. 4th 563, 574, emphasis in the original.)

Burbank asserts that Student should be required to pay Burbank's costs of moving to dismiss the complaint because, "at no time since October 20, 2022, has Student withdrawn or amended her Complaint ." This statement is inaccurate. Student filed a motion to amend the complaint and a proposed amended complaint on November 4, 2022.

Burbank has also failed to establish that Student filed the original complaint frivolously or with an intent to harass Burbank. Burbank's motion to shift costs acknowledges Burbank was aware Student intended to file an amended complaint as early as November 1, 2022. Burbank also acknowledges that the original complaint may have been filed due to Student's counsel's lack of knowledge of a prior settlement

agreement between Parents and Burbank. Therefore, there is no evidence the original complaint was filed in bad faith. Burbank has failed to establish grounds for shifting the costs of their motion to dismiss the complaint to Student.

ORDER

1. Student's motion to amend is granted. The amended complaint is deemed filed on the date of this order, and all applicable timelines are reset. All currently scheduled dates are vacated. OAH shall issue a new scheduling order.
2. Burbank's motion for reconsideration is denied as Moot.
3. Burbank's motion to shift Burbank's costs of its motion to dismiss the original complaint to Student is denied.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings