BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025041265

ORDER DENYING MOTION TO COMPEL AND DENYING MOTION FOR SANCTIONS

MAY 30, 2025

On April 29, 2025, Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Cupertino Union School District. OAH determined that Student's complaint included issues subject to the expedited hearing procedures under special education law.

Administrative Law Judge, called an ALJ, Arden conducted an expedited prehearing conference, called a PHC, on May 19, 2025. ALJ Arden issued an order following the expedited PHC on May 20, 2025. That Order instructed the parties to, "meet and confer no later than 5:00 PM on May 21, 2025, to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues

related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any."

The May 20, 2025, Order also directed Cupertino to "inform Student which proposed witnesses are District employees. Cupertino shall also identify the witnesses on Student's list that require a subpoena. Cupertino may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information."

STUDENT DID NOT PROVE CUPERTINO FAILED TO COMPLY WITH THE MAY 20, 2025, ORDER

On May 27, 2025, Student filed a motion to compel Cupertino to comply with the May 20, 2025 Order. Specifically, Student asserted that Cupertino withheld contact information for four individuals: Lynna Chang, Michelle Leary, Ranferis Martinez, and Jennifer Virrueta. Student asserted that Chang and Leary were Cupertino employees, and that Martinez and Virrueta were possibly employed by the YMCA, which had a contract with Cupertino to operate Cupertino's afterschool program. Student supported his motion with a sworn declaration from Parent, as well as a copy of email correspondence between Parent and Cupertino's counsel. Student's motion also included a request that OAH issue sanctions against Cupertino for its alleged failure to comply with the May 20, 2025 Order.

Cupertino responded on May 28, 2025. Cupertino asserted that counsel attempted to meet and confer with Parent on multiple occasions, agreed to make Cupertino employees available without subpoena, and agreed to accept service of subpoenas for two staff members who were either on leave, or had recently ended employment with Cupertino. Cupertino also asserted that several individuals Parent

requested contact information for were not and never were Cupertino employees. Cupertino supported its response with a sworn declaration from counsel, and a more complete copy of the email correspondence proffered by Student.

Student did not establish that Cupertino failed to comply with the May 20, 2025 Order. Rather, the evidence offered by the parties shows Cupertino's compliance with the May 20, 2025 Order, by agreeing to make its employees available without subpoena and by agreeing to accept service of subpoenas on behalf of two staff members who were either on leave or had recently ended employment with Cupertino.

Student did not establish that Cupertino failed to provide contact information for Chang. The evidence established that Chang is not employed by Cupertino. Nevertheless, Cupertino provided Parent with contact information for Chang's employer.

Student did not establish that Cupertino failed to comply with the May 20, 2025 Order regarding Leary. The evidence established that Leary was misidentified on Student's witness list. Cupertino subsequently investigated the individual it believed Student wished to call as a witness and determined that the individual in question was Michele Neely, a behavior interventionist and Cupertino employee. Upon clarifying Leary's identity as Neely, Cupertino agreed to make her available without subpoena.

Student also did not prove that Cupertino was required to provide contact information for Martinez or Virrueta. Student conceded Martinez and Virrueta might be YMCA employees. Student's contention that their practice was to block Student's access to the after-school program after 4:30 PM was not evidence sufficient to prove Cupertino had control over them such that it could compel them to testify. Student did not prove that the May 20, 2025, Order required Cupertino to provide Parent with contact information for Martinez or Virrueta.

Overall, Student did not establish any instance where Cupertino failed to comply with the May 20, 2025 Order by not making staff available without subpoena, not accepting subpoenas as required, or not providing contact information for Cupertino employees. Therefore, Student's motion to compel is denied.

OAH DOES NOT SERVE SUBPOENAS ON BEHALF OF PARTIES

In Student's Motion to Compel, Student requests that OAH, "serve subpoenas on witnesses that [Cupertino] assigned to work with Student." OAH does not serve subpoenas on witnesses. As explained in the May 23, 2025, Order Granting Motion to Quash Subpoena Duces Tecum, OAH must sign a subpoena on behalf of a party upon request. (Code of. Civ. Proc., § 1985, subd. (c); see also *McLeod v. Board of Pension Commissioners* (1970) 14 Cal.App.3d 23, 61.) This function may also be called issuing a subpoena. However, the party requesting a subpoena issued by OAH is responsible for serving the subpoena, not OAH. Accordingly, Student's request that OAH serve subpoenas on any individual is denied.

STUDENT FAILED TO PROVE CUPERTINO SHOULD BE SANCTIONED

In certain circumstances, 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, Student failed to establish that Cupertino engaged in bad faith actions or tactics that were frivolous or solely intended to cause unnecessary delay deserving of sanctions, such as cost shifting. As determined previously, Student did not establish that

Cupertino failed to comply with the May 20, 2025 Order. Student did not establish Cupertino has engaged in any other behavior which would subject Cupertino to sanctions. Therefore, Student's motion for sanctions is denied.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings