BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VICTOR VALLEY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018090720 ORDER DENYING MOTION FOR SANCTIONS

On September 20, 2018, Parent on behalf of Student filed a request for due process hearing, naming the Victor Valley Union High School District and asserting that Victor Valley denied Student a free appropriate public education by violating its "child find" duties with respect to his asserted need for special education and related services. The complaint was filed on the caption of Yarijanian and Associates, a law firm, and was signed by Hamlet Yarijanian, a duly licensed attorney at law.

On November 1, 2018, the parties jointly filed, on an OAH form, a request for mediation and a continuance of the prehearing conference and due process hearing previously scheduled. OAH granted the request on the same day. The form was signed by Victor Valley's attorney, Vivian Billups, and by Jose Tuchan, a clerk and non-lawyer in the offices of Yarijanian and Associates.

On November 2, 2018, Ms. Billups filed,on behalf of Victor Valley, a motion for sanctions to be awarded against Mr. Yarijanian on the asserted grounds that he is allowing Mr. Tuchan to practice law without a license by signing documents that will be reviewed and acted upon by an OAH Administrative Law Judge. The motion was accompanied by a declaration from Ms. Billups.

On November 6, 2018, Mr. Yarijanian filed an opposition to the motion for sanctions and a declaration, in which he asserts that he has daily meetings with Mr. Tuchan to approve mediation dates that Mr. Tuchan arranges with opposing counsel and OAH.

APPLICABLE LAW

In certain circumstances, an ALJ presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, § 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner v. Manhattan Beach Unified Sch. Dist*. (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly [Cal. Code Regs., tit. 5] § 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).)

The ALJ presiding at the hearing may order reimbursement either to OAH or to another party. With prior 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 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. Cod 1455.30, subd. (a).)

An ALJ presiding over a hearing, without first obtaining approval from the California Department of Education, 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.)

DISCUSSION

The gravamen of Ms. Billups complaint is that she believes Mr. Yarijanian is violating various statutes and State Bar rules by allowing Mr. Tuchan to sign documents she characterizes as pleadings that will be reviewed and acted upon by an OAH judge.

The unsworn portion of Ms. Billup's motion makes several factual assertions about the legal status of various people in Yarijanian and Associates, and includes a claim that his office has been engaged in the "rapid-fire" filing of due process cases, from which she speculates that the three attorneys in the office do not have time to do their duties properly. She names seven due process filings by Yarijanian and Associates in September and October 2018, including this one, and implies without proof of any kind that these filings are making the attorneys in the office overly busy and forcing them to have Mr. Tuchan do what they should be doing. Aside from unsworn assertions relating to this matter, Ms. Billups offers no facts about any of the named filings, and does not assert that they involve her or her client.

In her sworn declaration Ms. Billups does not verify the factual claims made in her motion except by attaching a series of emails in which she complains of having to do

business with Mr. Tuchan instead of an attorney. Instead, she asserts that even though she is opposing counsel and represents districts, she has a special role in enforcing the public interest because she hears from her school clients in this and other cases that parents increasingly complain that they were not aware of the terms of settlement agreements "and/or how/when/where the proceeding of the case was handled. (Not necessarily only by Yarijanian and Associates – but in general.)" Why any of these references to other cases or other parents' attorneys relate to this motion for sanctions is not explained.

As far as appears from the moving papers, Yarijanian and Associates did nothing in this matter that would support an award of sanctions. On November 1, 2018, the parties filed an OAH form requesting a mediation date and a continuance of the prehearing conference and due process hearing in this matter. It bears Mr. Tuchan's signature for parent. Otherwise, all the pleadings in the matter are signed by Mr. Yarijanian.

The request for a mediation date, with which Ms. Billups concurred, is a routine OAH procedure that occurs in most due process cases. The fact that Mr. Tuchan signed it has had no impact whatever on this proceeding. No other delay has been sought or granted. Ms. Billups's argument that this single signature is an act of bad faith, or frivolous, or intended to harass or delay opposing counsel is thus wholly unpersuasive.

The motion for sanctions is DENIED.

DATE: November 8, 2018

DocuSigned by:
Charles Marson
22945BBAD50448E...

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings