BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA SCHOOL OF THE ARTS - SAN GABRIEL VALLEY.

OAH CASE NUMBER 2023010440

ORDER DENYING MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SANCTIONS

MARCH 8, 2023

On January 18, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming California School of the Arts – San Gabriel Valley.

On January 31, 2023, School of the Arts filed a Notice of Insufficiency as to the complaint. On February 1, 2023, OAH found all three claims in the complaint insufficient and granted Student 14 days leave to amend.

On February 13, 2023, Student filed an amended complaint, which will be referred to as the first amended complaint. On February 22, 2023, School of the Arts filed a timely notice of insufficiency as to the first amended complaint.

On February 22, 2023, School of Arts also filed a Motion to Dismiss Petitioner's First Amended Complaint, or in the Alternative, Motion for Sanctions. School of Arts argues that Student's first amended complaint should be dismissed, or that OAH should initiate contempt sanctions or shift expenses based on Student's conduct since the filing of his prior complaint against Respondent in June 2022, in OAH case number 2022060166.

Specifically, Respondent argues the first amended complaint in the present matter should be dismissed because Student has demonstrated an unwillingness or inability to adequately articulate his allegations in this case or in the prior case. Respondent asserts that Student withdrew his prior case on January 19, 2023, and filed the present action, after OAH issued an Order to Show Cause re dismissal based on Student's failure to comply with a November 21, 2022 prehearing conference order requiring a more specific prehearing conference statement and failing to appear at the January 9, 2023 prehearing conference. Respondent argues that Student's first amended complaint filed in this case fails to comply with the February 1, 2023 Insufficiency Order because it does not include sufficient facts to state a claim within OAH's jurisdiction.

Relying on Government Code section 11455.30, Respondent also asserts that OAH initiate contempt sanctions against Student or place expenses at issue. Respondent contends that the multiple amendments to the complaint in the prior action, followed by dismissal in January 2023, the filing of the present action, and failing to comply with the February 1, 2023 Insufficiency Order to allege sufficient facts, are frivolous actions, done in bad faith, and for the sole purpose of harassing School of Arts and causing an unnecessary delay. Respondent also relies on a declaration filed in

support of its February 22, 2023 notice of insufficiency, summarizing the pertinent history, including Student's failure to attend a resolution session on February 2, 2023.

On February 24, 2023, Student filed opposition to the motion for dismissal or sanctions. Student argues that its first amended complaint is properly pled, should not be dismissed, and is not frivolous or brought for an improper purpose. Student claims Respondent has cherry-picked the procedural history and that the motion should be stricken. Student argues the past procedural history is irrelevant to whether Student has sufficiently stated a claim. Student asserts that sanctions are not justified because Respondent has failed to demonstrate Student did anything to cause unnecessary delay. Student argues that the filing of a very different complaint to attempt to overcome OAH's objections was not unnecessary, and the fact that it was deemed insufficient does not render it frivolous or filed to cause unnecessary delay. Student asserts he attempted to comply with the February 1, 2023 Order by eliminating certain claims in the amended complaint. Student also argues that counsel's paralegal had a heart attack on January 30, 2023 and could not attend the resolution session on February 2, 2023.

On February 27, 2023 OAH issued an Order Finding the First Amended Due Process Complaint Insufficient, and granted Student 14 days leave to amend. Student has not filed a second amended complaint.

APPLICABLE LAW

Provisions for contempt sanctions, order to show cause, and expenses contained in Government Code sections 11455.10, 11455.20 and 11455.30 of the Administrative Procedures Act apply to special education due procedures except as modified by subdivisions (b) through (e) of California Code of Regulations, title 5, section 3088. (Cal. Code. Regs., tit. 5, § 3088, subd. (a).) With approval from the California Department of

Education, the presiding officer or agency head may certify the facts that justify the contempt sanction against a person to the superior court in and for the county where the proceeding is conducted. (Gov. Code § 11455.20; Cal. Code. Regs., tit. 5, § 3088, subd. (c).) A person is subject to the contempt sanction for, among other things, disobedience of or resistance to a lawful order, unlawful interference with the process or proceedings of the agency, and failure or refusal without substantial justification to comply with and order of the presiding officer. (Gov. Code § 11455.10.)

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 OAH. (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 initiate contempt sanctions or 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, subd. (e); Gov. Code, § 11455.30, subd. (a); see also Cal. Code. Regs., tit. 1, § 1040, 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 as defined in Section 128.5 of the Code of Civil Procedure." (Gov. Code, § 11455.30, subd. (a).)

"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

Respondent's motion to dismiss the first amended complaint is denied. On February 27, 2023, OAH issued an order finding the first amended complaint insufficient and gave Student leave to amend. Accordingly, the motion to dismiss the first amended complaint is moot.

Respondent's motion to seeking to have OAH initiate contempt sanctions or place expenses at issue is also denied. Only the ALJ who is presiding over the matter may place initiate contempt sanctions and/or place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) The ALJ in this matter declines to do so as explained below. Any failure by Student to properly plead his prior case or comply with any OAH order in the prior matter, was or should have been addressed in the prior matter and will not be addressed here.

Respondent has not established that contempt sanctions are appropriate. Respondent has failed to specifically explain why a contempt citation is appropriate or otherwise apply Government Code section 11455.10 to the conduct in the present matter. To the extent that Respondent is relying on Student's failure to sufficiently plead the claims in the first amended complaint, a notice of insufficiency was the appropriate method to challenge any deficiencies. Respondent filed a notice of insufficiency and OAH issued an Order of insufficiency on February 27, 2023. Accordingly, a request for the issuance of a contempt citation is not warranted.

Finally, Respondent has failed to properly establish that OAH should place expenses at issue. As an initial matter, the motion was not supported by a declaration sworn under penalty of perjury explaining exactly what expenses Respondent is seeking to shift to Student. In fact, the only declaration Respondent cites to is devoid of any proper certification under penalty of perjury that the information contained in it is true and correct. (See, Code of Civ. Proc. § 2015.5.) Further, Respondent has failed to explain what legal tasks were undertaken and necessary, the number of hours billed, the hourly rate charged for such services and the description of the experience of the attorneys to

justify the hourly rates. (See Cal. Code Regs., tit. 1, § 1040, subd. (c). These grounds alone are sufficient to deny the motion to shift expenses. Accordingly, the motion is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings