BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MAGNOLIA SCIENCE ACADEMY - SANTA ANA.

OAH CASE NUMBER 2022050826

ORDER DENYING MOTION FOR SANCTIONS AND SHIFTING LITIGATION COSTS

NOVEMBER 23, 2022

Student filed a due process hearing complaint naming Magnolia Science Academy – Santa Ana, called Magnolia, on May 24, 2022, with the Office of Administrative Hearings, called OAH. Student was not represented by an attorney, but by the Parent, in this case. On October 31, 2022, Parent dismissed the case. On November 8, 2022, Magnolia filed a motion for sanctions requesting that OAH shift its litigation costs to Parent. Magnolia contends that since May 22, 2022, Parent's actions needlessly increased the cost of Magnolia's litigation by requesting untimely hearing continuances and then dismissing the case at 4:36 PM the day before the November 1, 2022 due process hearing, with the intention of refiling another due process hearing complaint.

Magnolia contends that Parent's expressed reasons for dismissing the complaint on October 31, 2022, which included struggling with parental care, commitments with childcare, and obtaining documents from a prior school district, were the same as those Parent represented to secure three hearing continuances. Magnolia further contends that Parent was unavailable to meet and confer with Magnolia regarding hearing preparation until October 28, 2022, despite Magnolia's attempt to schedule a meet and confer since the September 23, 2022 prehearing conference. Parent missed the deadline to upload documents for the November 1, 2022 hearing. Magnolia contends it incurred $6,133 in legal costs from October 26, 2022 to October 31, 2022, in preparing for hearing and settlement discussions with Parent, and that those costs should be shifted to Parent. Magnolia alleges that Parent engaged with settlement negotiations in bad faith as Parent was unprepared for hearing and stated she would dismiss and refile the case if it did not settle.

Parent did not file a response to Magnolia's motion for sanctions.

APPLICABLE LAW

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).)

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.)

DISCUSSION

Magnolia's motion for sanction fails. Although Magnolia recounted frustrating parental delays including Parent not being prepared for hearing after multiple hearing continuances, Parent has the right to withdraw the case. Magnolia's concern was Parent's representation to it that if the parties did not arrive at settlement terms agreeable to Parent resulting in settlement, Parent would withdraw this case, and refile another after causing further delays and unnecessary litigation costs to Magnolia. However, Parent has not refiled another due process hearing request. Parent's case withdrawal after three hearing continuances did not amount to sanctionable conduct. Therefore, Magnolia's motion for sanctions to shift its litigation costs to Parent is denied.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings