BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2020011090

ORDER DENYING DISTRICT'S MOTION TO DISMISS AND MOTION TO EXCLUDE AND DENYING STUDENT'S MOTION FOR SANCTIONS

MAY 08, 2020

On May 6, 2020, Bellflower Unified School District filed a Motion to Dismiss Student's Due Process Complaint, or in the Alternative, to Exclude Student's Evidence at Hearing, with the Office of Administrative Hearings, referred to as OAH. Bellflower's motion is supported by sworn declaration of counsel. Bellflower maintains that it did not receive a physical copy of Student's evidence binder five business days prior to the first day of the due process hearing.

On May 7, 2020, Student filed an opposition to Bellflower's motion, as well as a request for sanctions. Student's response is supported by sworn declaration of counsel.

Student maintains that he sent Bellflower's counsel a copy of Student's exhibits via email five business days before the hearing. Additionally, Student provided Bellflower with a physical copy of Student's evidence binder three business days prior to hearing. Student requests sanctions against Bellflower on the basis that Bellflower did not disclose in its motion of May 6, 2020, that it had received a digital copy of Student's exhibits on May 5, 2020, and that Bellflower had not timely served Student with Bellflower's witness list.

APPLICABLE LAW

BELLFLOWER'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO EXCLUDE

The purpose of the Individuals with Disabilities Education Act, referred to as the IDEA, is to "ensure that all children with disabilities have available to them a free appropriate public education", known as a FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501. Subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure.

Education Code section 56505, subdivision (e)(7) requires the parties to a due process hearing to provide documents and disclose witnesses to the other party at least five business days before the commencement of the hearing. The Education Code does not explicitly state whether documents exchanged under Education Code section 56505, subdivision (e)(7) must be provided in physical, hard copies, or if they may be exchanged digitally.

California Code of Civil Procedures section 1010.6 states that for cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person under section 1010.6, subdivision (c) or (d).

The Administrative Law Judge, referred to as ALJ, hearing the case has the discretion to exclude from evidence any documents, or witness testimony not timely disclosed. (Ed. Code, § 56505.1, subd. (f).)

OAH requires a party to file a prehearing conference, referred to as PHC, statement at least three business days prior to the PHC. Each party has a duty to disclose his or her witness and documentary exhibits in the mandatory PHC statement.

STUDENT'S MOTION FOR SANCTIONS

An Administrative Law Judge is authorized to issue sanctions to shift the expenses to a party acting in bad faith, or using tactics that are frivolous or solely intended to cause unnecessary delay to the other party and/or their attorneys. (Cal. Code Regs., tit. 5, § 3088, incorporating Gov. Code, § 11455.30.)

"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

Here, counsel for both parties participated in a Prehearing Conference on May 1, 2020. At the PHC, the ALJ admonished the parties that they still had the obligation to exchange evidence in compliance with the Education Code in addition to new rules governing submission of exhibits to OAH under the procedures for video hearings. The Order Following Prehearing Conference states that any exhibit not timely disclosed five business days prior to hearing would not be admitted into evidence at hearing unless the ALJ ruled that it would be admissible.

Bellflower is correct that it had a right to receive from Student, at least five business days before the hearing, an evidence binder containing copies of all exhibits Student plans to introduce, and to exclude any evidence not so produced. (Ed. Code, § 56505, subds. (e)(7), (8).) However, the ALJ has the discretion, at hearing, to admit or reject evidence not timely disclosed. (Ed. Code, § 56505.1, subd. (f).)

The consequence of Student's failure to serve Bellflower with a physical copy of its exhibit binder is not dismissal of the hearing request. Bellflower has provided no legal authority that would allow OAH to dismiss Student's complaint. Student is entitled

to an evidentiary hearing and adjudication of her issues, all of which are within OAH's jurisdiction. Accordingly, Bellflower's motion to dismiss is denied.

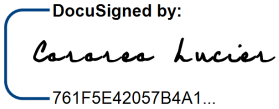
Bellflower does not assert that it will be unduly prejudiced by the admission of Student's evidence, but rather moves to exclude the evidence on procedural grounds. Bellflower was provided with copies of all of Student's documentary exhibits five business days prior to the hearing, albeit in digital form. Bellflower also received a physical copy of Student's evidence binder two days later. Additionally, in this matter Bellflower has served Student with documents via email without Student's consent for electronic service. Student's failure to provide Bellflower with physical copies of its exhibits five business days prior to hearing is a harmless error. Bellflower's motion to exclude Student's evidence is denied.

Student's motion for sanctions against Bellflower is denied. Student did not establish that Bellflower acted in bad faith, or engaged in tactics that are frivolous or solely intended to cause unnecessary delay.

ORDER

1. Bellflower's motion to dismiss is denied. The matter shall proceed as scheduled.
2. Bellflower's motion to exclude Student's evidence at hearing is denied.
3. Student's motion for sanctions is denied.

IT IS SO ORDERED.



Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings