BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023060624

ORDER DENYING MOTION FOR SANCTIONS OR TO SHIFT EXPENSES

JULY 27, 2023

On June 16, 2023, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Liberty Union High School District, called Liberty. On July 14, 2023, Liberty filed a motion to dismiss or, in the alternative, to extend the procedural timelines, based upon Student's failure to participate in a mandatory resolution session. Student opposed the motion and Liberty replied to the opposition. On July 21, 2023, OAH denied the motion, finding that Parents adequately participated in the resolution session.

On July 25, 2023, Student filed a motion for sanctions, with declarations. Student argues Liberty's claim that Student did not adequately participate in the resolution

session was knowingly dishonest and therefore warrants shifting legal expenses related to the motion. On July 27, 2023, Liberty opposed Student's motion.

In certain circumstances, an administrative law judge, called 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 ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029.) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

An ALJ presiding over a hearing 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).) 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, Liberty did not act in bad faith, dishonestly, or in a frivolous manner. Liberty's motion asserted that Parents and Student's advocate attended a resolution session scheduled by Liberty, but Liberty believed that Student failed to sufficiently discuss resolution during the meeting. The resolution meeting is mandatory, and Liberty's motion was based upon good faith concerns regarding the fidelity of the resolution process. Liberty's motion to dismiss or extend procedural timelines required

a factual analysis by OAH. OAH's finding that Student sufficiently participated during the resolution meeting does not mean Liberty's concerns were without some merit or that Liberty acted in bad faith, dishonestly, or in a frivolous manner. Consequently, Student's request is denied.

IT IS SO ORDERED.



Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings