BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060688

ORDER DENYING MOTION FOR SANCTIONS WITHOUT PREJUDICE

OCTOBER 23, 2023

On June 16, 2023, Parent on behalf of Student filed a request for due process with the Office of Administrative Hearings, called OAH, naming Mount Diablo Unified School District, called Mount Diablo. OAH held a due process hearing for this matter on August 30, and 31, and September 6, 7, and 12, 2023. OAH has not yet issued a Decision for this matter. On October 11, 2023, Mount Diablo filed a request for sanctions. On October 16, 2023, Student opposed the 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 ["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.)

Mount Diablo primarily argues that two or more of Student's issues were frivolous or brought to harass Mount Diablo. Mount Diablo also complains that Student's attorneys and advocate acted improperly during the resolution session, Student's complaint and prehearing conference statement were defective, and Student failed to comply with OAH's Scheduling Order and Prehearing Conference Order. For these reasons, Mount Diablo requests half of its attorney fees incurred for this matter, and costs for the motion.

Regarding Mount Diablo's assertion that Student's attorneys and advocate acted improperly during the resolution process, OAH has already addressed this complaint in OAH's July 12, 2023, Order Denying Motion to Dismiss and Extending Procedural Timelines.

Regarding Mount Diablo's assertion that Student's pleadings were defective, and that Student failed to comply with OAH orders, the ALJ in this matter declines to impose sanctions for these specific reasons as such sanctions are not necessary to ensure an orderly and fair hearing. (Cal. Code Regs., tit. 5, § 3088, subd. (b).)

Mount Diablo's primary assertion that two or more of Student's issues were frivolous or brought for an improper purpose has merit but is premature. In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after

the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (20 U.S.C. § 1415(i)(3)(B)(i)(II), (III).)

Here, OAH has not yet issued a Decision or prevailing party status for any issues for this matter. Consequently, Mount Diablo's motion is premature and denied without prejudice. This Order does not estop Mount Diablo from filing a claim for its attorney fees or other sanctions in a court of competent jurisdiction, such as Federal District Court, following OAH's issuance of the Decision.

ORDER

Mount Diablo's motion for sanctions is denied without prejudice. Mount Diablo may file a claim for its attorney fees or other sanctions in a court of competent jurisdiction following OAH's issuance of the Decision.

Paul H. Kamoroff (Oct 23, 2023 14:47 PDT)

Paul H Kamoroff
Administrative Law Judge
Office of Administrative Hearings