BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2024070763

ORDER TO SHOW CAUSE AS TO WHY PARENT SHOULD BE ORDERED TO PAY EXPENSES

AUGUST 08, 2024

On July 22, 2024, Parent on behalf of Student filed a request for due process hearing, complaint, naming Del Mar Union School District. On July 29, 2024, Parent on behalf of Student filed ex parte communications with the Office of Administrative Hearings, called OAH, in this matter that requested that OAH seal Student's records. Student's request did not contain a proof of service upon Del Mar Union School District, nor its legal counsel. Parent further emailed this document to seven OAH Administrative Law Judges, ALJs, including the undersigned, and a Department of General Services employee On July 31, 2024, OAH served Parent with Notice of Receipt of Ex Parte Communications, and provided Del Mar Union with a copy of Student's request.

On July 31, 2024, at 5:24 PM, Parent filed with OAH "SIXTH REQUEST TO SEAL FOR FRAUD AND VIOLATION OF PRIVACY RIGHTS OAH CASE NUMBER 2024070763." Further, Parent emailed 35 minutes later seven OAH ALJs and DGS employee the same motion. As with the July 29, 2024 Third Request to Seal, Parent did not serve Del Mar Union.

On August 2, 2024, OAH served Parent with Notice of Receipt of Ex Parte Communications; Order to Cease Emailing OAH, and provided Del Mar Union with a copy of Student's Sixth Request to Seal. The Order told Parent not to email OAH ALJs or DGS employees any motions or letters regarding Student. Student was to file these documents through the OAH Secure File Transfer system or by mail. Finally, Parent's failure to comply with this Order could result in OAH sanctioning Parent.

Parent failed to comply with the August 2, 2024 Order as on August 8, 2024, Parent emailed the same seven ALJs and DGS employee with Student's "Opposition to Del Mar Union School District's Motion to Dismiss." Parent did provide the attorneys for Del Mar Union with a copy of the document.

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).) Absent exceptional circumstances, a law firm is held jointly responsible for violations committed by its partners, associates, or employees. (Code Civ. Proc., § 128.5, subd. (f)(1)(C).)

"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.)

ORDER TO SHOW CAUSE

Parent has failed to comply with the August 2, 2024 Order as Parent emailed the seven OAH ALJs, along with a Department of General Services employee. Parent's conduct in sending OAH ALJs documents regarding Student appears designed to harass OAH ALJs so they will grant Parent the requested relief against Del Mar Union. Therefore, Parent is ordered to show cause why Parent should not be required to pay OAH's costs as to the August 8, 2024 Opposition to Del Mar Union School District's Motion to Dismiss, and this Order to Show Cause.

Parent is ordered to file a written response with OAH by no later than 5:00 PM. on August 14, 2024. A copy of the response shall be served upon Del Mar Union. Del Mar Union is not expected to file a written response. Parent shall submit this written response to OAH through the OAH Secure File Transfer system or by mail, and not email any OAH ALJ or DGS employee with the response.

Parent's response shall address why Parent continued to email OAH ALJs and DGS employee despite the explicit directive in the August 2, 2024 not to email these persons. Parent's written response shall address why OAH should not order Parent to pay OAH's expenses caused by Parent violating the August 2, 2024 Order, and for this order to show cause.

The order to show cause hearing shall take place by videoconference on August 16, 2024, at 11:00 AM. Failure of Parent to appear by videoconference at the order to show cause hearing on August 16, 2024, may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why Parent Should be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 PM on Wednesday, August 14, 2024.
2. A telephonic order to show cause hearing shall be convened at 11:00 AM. on Friday, August 16, 2024.

IT IS SO ORDERED.

Peter Paul Castillo

Peter Paul Castillo
Division Chief Administrative Law Judge
Office of Administrative Hearings