BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030847

ORDER GRANTING PALO ALTO UNIFIED SCHOOL DISTRICT'S MOTION TO SHIFT EXPENSES

MAY 22, 2025

On March 3, 2025, Parents on behalf of Student, through their attorney The Law Offices of Nicole Hodge Amey, filed with the Office of Administrative Hearings, called OAH, a due process hearing request in OAH case number 2025030069, naming Palo Alto Unified School District. OAH case number 2025030069 is referred to as Student's First Case.

On March 7, 2025, Attorney Nicole Hodge Amey on behalf of Student filed a motion to consolidate Student's First Case with his sibling's case, which was filed with OAH on December 11, 2024. Student's sibling case is referred to Sibling's First Case. Attorney Amey was the attorney of record who filed Sibling's First Case. On March 12,

2025, OAH denied the motion to consolidate the cases because the cases did not involve the same parties and did not involve a common question of law or fact. The March 20, 2025 Order specified that OAH does not consolidate cases filed by siblings because each case relates to a specific child and their unique needs, which must be addressed individually under the Individuals with Disabilities Education Act.

On March 20, 2025, Amey moved to dismiss Student's First Case and Sibling's First Case. On March 20, 2025, OAH issued a Notice of Case Dismissal in both cases. Following the issuance of the Notices, Amey filed the current complaint on March 20, 2025. This matter is referred to as Student's Second Case. Amey also filed a second complaint for the sibling on March 20, 2025, referred to as Sibling's Second Case.

On March 20, 2025, Amey filed a second motion to consolidate Student's Second Case with Sibling's Second Case. On March 25, 2025, OAH denied the second motion to consolidate for the same reasons the first motion to consolidate was denied. OAH set an order to show cause as to why sanctions should not be imposed on Amey for the undue consumption of judicial resources when Amey re-filed under two new case numbers, identical motions to consolidate Student's and his sibling's cases, that Student and his sibling lost previously. The Order to Show Cause was initially scheduled for April 28, 2025, but was rescheduled by OAH to May 9, 2025, to be heard at the prehearing conference.

On May 7, 2025, after close of business, Student filed a response to the Order to Show Cause. On May 7, 2025, after Student filed his response, Palo Alto Unified filed a motion for sanctions, supported by a declaration of its attorney Nicole Mirkazemi.

OAH held a prehearing conference on May 9, 2025, and ordered Palo Alto Unified to file a detailed invoice of the fees it sought to shift to Amey, supported by declaration,

no later than 5:00 PM on May 12, 2025. OAH also granted Student's request to file a written response to Palo Alto Unified's motion for sanctions because Amey had not yet reviewed Palo Alto Unified's motion. Student's response was due to OAH by 5:00 PM on May 13, 2025.

On May 14, 2025, Palo Alto Unified filed another declaration by Mirkazemi, with an attached copy of an attorney fees invoice. On May 15, 2025, Student filed an objection to the motion for sanctions.

In certain circumstances, an administrative law judge, called 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).)

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.)

Palo Alto Unified contends sanctions against Amey is warranted because Student's second motion to consolidate filed by Amey was meritless and filed without a good faith basis. As a consequence, Palo Alto Unified argues Amey should be sanctioned, and the cost of Palo Alto Unified's attorneys fees to respond to the second motion to consolidate should be shifted to Amey.

In his objection, Student explains that Palo Alto Unified has sought motions for sanctions in both this matter and in Sibling's Second Case, for the same motion to consolidate. Student argues that Palo Alto Unified should not recover attorney fees against Amey in two cases, for responding to one motion to consolidate.

The March 20, 2025 Order denying consolidation clearly explained that OAH does not consolidate cases filed by siblings because each case relates to a specific child and their unique needs, which must be addressed individually under the Individuals with Disabilities Education Act. Nevertheless, Amey still filed a second motion to consolidate the sibling cases, ignoring the clear directive that OAH does not consolidate sibling cases. Amey does not mention in the second motion to consolidate that she filed the same motion in March 2025 and that OAH denied her request to consolidate the siblings' cases.

Accordingly, Amey's filing of the second motion to consolidate Student's Second Case and Sibling's Second Case was in bad faith, and frivolous. As a consequence, sanctioning Amey by shifting to Amey the attorney fees incurred by Palo Alto Unified in responding to, and seeking sanctions as a result of, the frivolous second motion to consolidate, is warranted.

Palo Alto Unified seeks to shift $1,161.50 of attorney fees to Amey. However, Mirkazemi's declaration and her attorney fee invoice does not support shifting $1,161.50. Student's Second Case and second motion to consolidate was filed on March 20, 2025, and therefore, any fees incurred prior to March 20, 2025, are unrelated to the second motion to consolidate.

Palo Alto Unified incurred $70.50 in attorney's fees on March 25, 2025. However, the invoice is unclear as to whether that cost was associated with the second motion to consolidate. Mirkazemi's declaration and fee invoice does not clearly explain any fee which Palo Alto Unified incurred in filing an opposition to the second motion to consolidate.

Palo Alto Unified incurred 1.9 hours of attorney's fees on May 6 and 7, 2025, totaling $446.50, for Mirkazemi's time preparing and filing the motion for sanctions, and her declaration and attorney's fee invoice. Mirkazemi's fee is $235.00 per hour. Shifting $446.50 to Amey, for attorney fees incurred by Palo Alto Unified to seek sanctions for Amey's frivolous and bad faith tactics to consolidate the sibling cases for a second time, is justified and ordered as a cost-shifting sanction against Amey.

ORDER

1. Palo Alto Unified's motion for sanctions is granted.

2. Palo Alto Unified's attorney's fees in the amount of $446.50, is shifted to Nicole Hodge Amey and the Law Offices of Nicole Hodge Amey as cost-shifting sanctions. These sanctions are imposed on Nicole Hodge Amey and the Law Offices of Nicole Hodge Amey jointly and severally. Neither Nicole Hodge Amey nor the Law Offices of Nicole Hodge Amey shall pass these costs on to Student or Parents.
3. Within 30 days of this Order, Attorney Nicole Hodge Amey and the Law Offices of Nicole Hodge Amey shall pay Palo Alto Unified by certified check the sum of $446.50.
4. Failure to comply with this Order may result in a civil judgement or finding of contempt.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings