BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

DEL NORTE COUNTY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024110598

ORDER DENYING MOTION TO DISMISS AND MOTION TO SHIFT ATTORNEYS' FEES

DECEMBER 5, 2024

On November 19, 2024, Del Norte Unified School District, called Del Norte, filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, called a complaint, naming Student. On November 22, 2024, Student filed a motion to dismiss the complaint and motion to shift attorneys' fees. Student contends Del Norte's complaint is frivolous and violates the requirement of a school district to file a complaint for a due process hearing "without delay" upon a request by a student for an independent educational evaluation. Student further contends Del Norte is engaging in bad-faith litigation tactics.

On November 25, 2024, Del Norte filed an opposition to Student's motions. Del Norte contends OAH does not have authority to dismiss a complaint that states a claim within its jurisdiction. Del Norte contends sanctions are not warranted in this matter, and that Student's attorney has also been unreasonably contentious and raised his voice and hung up on Del Norte's attorney.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH's 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. Here, the motion to dismiss is not limited to matters that are facially outside of OAH's jurisdiction, but instead seeks a ruling on the merits. Whether Del Norte filed its complaint without "unreasonable delay" is an affirmative defense Student is raising in response to Del Norte's complaint. Accordingly, the motion to dismiss is denied.

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. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit.5, § 3088, subd. (b).) Expenses may be ordered to be reimbursed either to OAH or to another party. 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); Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit.5, § 3088, subd. (a).)

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.)

Student alleges that on October 30, 2024, Del Norte filed a due process request alleging the exact same issue as in this present matter. OAH designated that matter Case No. 2024101068. Student alleges Del Norte failed to timely exchange evidence in Case No. 2024101068 and dismissed the matter on November 18, 2024. The next day, November 19, 2024, Del Norte filed the complaint in this current matter.

Del Norte contends it was unable to timely exchange evidence in Case No. 2024101068 because it did not receive the Case Center link. The undersigned ALJ conducted an audit through Case Center with respect to Case No. 2024101068 and found that Del Norte's attorney was properly invited to the matter through Case Center and sent a link on November 8, 2024. There is no record within Case Center to suggest the email to Del Norte's attorney was undelivered or the link invalid. OAH internal notes in Case No. 2024101068 also confirm that OAH sent Del Norte's attorney a Case Center link on November 8, 2024, at approximately 10:33 AM. OAH's internal notes do not show Del Norte's attorney contacting OAH to inquire about the Case Center link.

Del Norte asserts OAH staff contacted Del Norte's attorney on November 21, 2024, regarding an error message in the electronic filing system, called SFT, and urges OAH to take notice of the internal notes. The undersigned OAH investigated the contention and found OAH staff contacted Del Norte's attorney on November 21, 2024.

However, this contact was with respect to the current matter, not Case No. 2024101068. The SFT system suggested a delay in delivering the scheduling order in the current matter, but Del Norte's attorney confirmed she did receive the scheduling order. There was no issue or error. Furthermore, the SFT system is separate from Case Center. Therefore, OAH's communication with Del Norte's attorney on November 21, 2024, is not relevant to Del Norte's explanation as to why it withdrew its request in Case No. 2024101068.

Regardless, Student has not proven that Del Norte withdrew its complaint in Case No. 2024101068 and filed the current matter on the next day, for bad faith or frivolous reasons, or to cause unnecessary delay. Student did not prove Del Norte's tactics were for the sole purpose of harassing Student. Additionally, Student did not prevail in his motion to dismiss Del Norte's complaint, for the reasons described above. As such, Student's motion to shift attorneys' fees is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings