BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CONEJO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022070464

ORDER DENYING MOTION TO SHIFT EXPENSES

AUGUST 10, 2022

On July 13, 2022, Student filed a request for due process hearing, also referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Conejo Valley Unified School District as respondent. On July 19, 2022, Conejo Valley filed a motion to dismiss the complaint on the grounds that Student did not seek permission in advance to serve the document via email. That motion was denied on July 22, 2022.

On July 29, 2022, Conejo Valley filed a Notice of Insufficiency. Student filed an opposition to the motion, which included a request for sanctions, on the grounds that the Notice was frivolous and intended to harass Student and delay the proceedings. On August 2, 2022, OAH issued an order finding the complaint sufficient based on the fact that the motion was filed beyond the fifteen-day cutoff for filing. The Administrative Law Judge did not address the sanctions motion on the grounds that different standards and

timelines applied to the two motions. The ALJ noted Student was not barred from filing a separately noticed motion for sanctions, which Student did on August 5, 2022.

APPLICABLE LAW

In certain circumstances, a Special Education Division administrative law judge, known as an ALJ, is authorized to shift expenses from one party to another. (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."].)

An ALJ 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).)

"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.) However, the imposition of sanctions does require a showing that the actions were meritless *or* frivolous *and* that

the action was pursued in bad faith. (*Campbell v. Cal Gard Sur. Services, Inc.* (1998) 62 Cal. App. 4th 563, 574, emphasis in the original.)

In this case, Student has failed to offer any evidence that Conejo Valley filed a Notice of Insufficiency in bad faith. The filing of a motion is not, in and of itself, evidence of bad faith. The filing of the Notice of Insufficiency one day after the fifteen-day limit, indicates a lack of care in calculating the due date of the motion. However, more than a date miscalculation is necessary to establish a filing was in bad faith, was frivolous, or solely intended to cause unnecessary delay. As Student has failed to establish the necessary evidence to support the motion, the reasonableness of the requested sanction is not addressed by this order.

Student's motion for sanctions is denied.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings