BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060562

ORDER DENYING STUDENT'S MOTION FOR SANCTIONS

AUGUST 12, 2024

On June 14, 2024, the Law Offices of Sheila C. Bayne, attorney for Student, filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Antioch Unified School District. At the time of filing Student was seventeen years of age.

On July 15, 2024, Antioch filed a motion to dismiss on the grounds Parents did not have standing to pursue the due process hearing as Student would reach the age of majority on July 12, 2024, prior to the scheduled due process hearing. On July 18, 2024, Student filed an opposition clarifying that the Superior Cout of Contra Cota granted Parents limited conservatorship of Student on May 24, 2024, and that they would maintain the right to make educational decisions on behalf of Student following her 18th birthday. Student attached a copy or the conservatorship papers to her opposition.

At the prehearing conference on July 19, 2024, OAH denied Antioch's motion to dismiss in light of the conservatorship. On July 29, 2024, Student withdrew her case.

On July 29, 2024, Antioch filed a motion for sanctions against Student's attorney for failing to comply with the prehearing conference order requiring the parties to meet and confer. On July 30, 2024, Antioch filed a Notice of Errata and an Amended Motion for Sanctions. On August 1, 2024, Student filed an opposition.

OAH retains jurisdiction to determine sanction motions based on conduct occurring while the matter was pending. On August 12, 2024, OAH found Student's attorney failed to comply with the meet and confer requirement but declined to shift costs and denied Antioch's motion for sanctions.

On August 5, 2024, Student filed a motion for sanctions against Antioch for filing what Student deemed a baseless and bad faith motion to dismiss. Student also seeks costs for preparing Student's response to Antioch's motion for sanctions. Student's motion is supported by the sworn declaration of Student's attorney. Student asserts Antioch should be sectioned for filing to dismiss Student's case because it filed the motion before Student turned 18 years of age and because it was aware Parents were in the process of and had obtained conservatorship over Student. Student further argues she is entitled to her costs for defending against Antioch's sanctions motion because Antioch filed its sanctions motion after Student withdrew her case and the motion was in bad faith and frivolous.

On August 8, 2024, Antioch filed an opposition to Student's motion for sanctions. Antioch asserts it filed the motion to dismiss in good faith as Student had not alleged in the complaint that she was under a conservatorship and failed to provide Antioch any information regarding the limited conservatorship prior to its July 18, 2024, opposition

to the motion to dismiss. Antioch further argues Student's motion for sanctions should be denied as it is premature because OAH has not yet ruled on it. Antioch contends OAH retains jurisdiction over Student's attorney's conduct of disregarding OAH orders despite Student's act of withdrawing her case.

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) & €; 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.)

DISCUSSION

Here, Student's motion fails. OAH requires parties to file any prehearing motion at least three business days prior to the scheduled prehearing conference. Antioch's motion to dismiss was not in bad faith nor frivolous simply because it was filed before Student attained the age of majority. Student presented no evidence that Antioch was aware Parents had obtained a limited conservatorship of Student and retained educational rights prior to filing its motion to dismiss for lack of standing. Student did not produce the order of conservatorship until Student filed its opposition to Antioch's motion to dismiss. There are no grounds to award sanctions here. Student failed to establish that Antioch's motion to dismiss was in bad faith, frivolous or without merit.

Further, although OAH has denied Antioch's motion for sanctions, Student failed to establish that Antioch's sanction motion was in bad faither, frivolous, or completely without merit. In its motion for sanctions, Antioch established that Student's attorney

failed to comply with OAH's order for the parties to timely meet and confer regarding witness scheduling. That OAH declined to shift Antioch's costs for preparing its unfiled motion for an order to show cause and its motion for sanctions does not prove that Student is entitled to its costs for opposing Antioch's motion.

Student's motion for sanctions and request to shift legal fees incurred for defending against Antioch's motion to dismiss and motion for sanctions is denied.

IT IS SO ORDERED.

Theresa Ravandi

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings