BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SPRINGS CHARTER SCHOOLS, AKA RIVER SPRINGS CHARTER SCHOOL,	 OAH Case No. 2018031003
RIVER SPRINGS CHARTER SCHOOL, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018060667 ORDER FOR NO SANCTIONS

On October 4, 2018, at approximately 4:00 p.m., in the midst of the due process hearing, River Springs Charter School's counsel emailed Student's counsel a letter raising concerns regarding communications between Mother and The Prentice School staff involving Student's placement at Prentice and its relation to the District Court stay put order. River Springs, through its counsels, claimed fraud on the part of Parents and Student's attorneys to mislead the ALJ and the District Court through Mother's declaration and Student's representations through her attorneys in federal court. In its letter, counsel for River Springs requested Student withdraw all claims against River Springs immediately.

On the same day, River Springs custodian of records, Tanya Rodgers, provided a letter to Prentice indicating that River Springs would pay the invoices for Student in protest. Ms. Rodgers alleged that Prentice was in violation of "the Judge's order for failing to provide services per the IEP. River Springs will seek all legal remedies for costs involved . . . related to your attempt to extort fees associated for a student with disabilities."

Mother and Student's attorneys were very concerned and visibly upset and distracted by the accusations. On October 4, 2018, Student filed with OAH a notice of violation of California Rules of Professional Conduct, rule 3.10, alleging River Springs, through its counsels, acted unethically with the intent to harass, threaten, and intimidate witnesses prior to their testimony.

On October 5, 2018, the ALJ ordered the parties to provide a written response as to why they should not be sanctioned for their conduct and tactics during the hearing. On October 8, 2018, the parties filed their responses and the matter was taken under submission.

APPLICABLE LAW

Under certain circumstances, an administrative law judge 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."].) A party may be order to pay expenses of a party, or OAH 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, subd. (a).) A party may also be ordered to pay costs for failure or refusal, without substantial justification, to comply with an order of the presiding officer. (Govt. Code § 11455.10.) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

River Springs in its response contends that its actions in providing the letters to Student and her attorneys on October 4, 2018, was not frivolous or intended to cause unnecessary delay. River Springs argues that its communications were necessary actions to address what it believed to be significant and troubling conduct on the part of Parents and Student's attorneys. Student in her response contends that her notice of violation was a reasonable, proportionate, and appropriate response to River Springs' allegations.

The hearing was highly contentious and the ALJ expended a considerable amount of time addressing the comments, objections, and conduct of the attorneys, resulting in unnecessary delay in the hearing. However, the correspondences and filings by the parties on October 4 and October 5, 2018, were not acts of bad faith or frivolous in light of circumstances, nor were they solely intended to cause unnecessary delay. Accordingly, no sanctions will be issued to either party.

DATE: January 14, 2019

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Rommel Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings