BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LUCIA MAR UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050816

ORDER DENYING MOTION TO COMPEL WITNESS CONTACT INFORMATION AND DENYING REQUEST FOR SANCTIONS

JULY 16, 2020

On May 27, 2020, Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Lucia Mar Unified School District. On July 13, 2020, OAH Ordered the parties to meet and confer by July 15, 2020, regarding the scheduling of witnesses for this matter.

On July 14, 2020, Student filed a motion to compel witness contact information and for sanctions, based upon Lucia Mar Unified failing to provide the addresses for witnesses employed by Lucia Mar Unified. On July 15, 2020, Student filed a supplement

because Lucia Mar Unified provided the requested witness information. Lucia Mar Unified opposed the motion on July 15, 2020. Student responded on July 16, 2020.

APPLICABLE LAW

In certain circumstances, the 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).)

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) & (b); 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).) "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 to describe conduct that warrants compulsion from OAH. Lucia Mar Unified provided Student the requested witness contact information and did so prior to 5:00 PM on July 15, 2020, when the parties were required to meet and confer regarding the scheduling of witnesses. Therefore, Student's motion to compel witness contact information is moot and denied.

Student's motion also failed to describe bad faith actions or tactics by Lucia Mar Unified that were frivolous or solely intended to cause unnecessary delay. To the contrary, Lucia Mar Unified timely responded to Student's request for witness contact information. Student's motion for sanctions is therefore denied.

The parties' pleadings for this matter fall below the conduct required by OAH. Counsel, all parties, and all witness must conduct themselves in a professional and

courteous manner at all times. Additional failure to comply with appropriate conduct shall result in sanctions.

ORDER

1. Student's motion to compel witness contact information is denied.
2. Student's motion for sanctions is denied.
3. Counsel, all parties, and all witness shall conduct themselves in a professional and courteous manner at all times.

IT IS SO ORDERED.

DocuSigned by:
Paul Kamoroff
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Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings