

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH Case No. 2014100290

ORDER WITHDRAWING ORDER TO
SHOW CAUSE; AND ORDER
DENYING MOTION FOR SANCTION

At the December 12, 2014 Prehearing Conference in this matter, Student's attorney Nicole Hodge Amey moved to continue the expedited hearing date, which the Office of Administrative Hearings denied on that date. On December 15, 2014, Ms. Amey, on behalf of Student, filed a request to continue the expedited hearing dates to January 6, 2015, based upon the death of a parent of her husband. The Panama-Buena Vista Unified School District submitted an opposition on December 16, 2014. On December 16, 2014, OAH granted Student's December 15, 2014 continuance request based upon Ms. Amey's declaration regarding the death of a parent of her husband and the two federal court matters cited in her declaration, even though she did not submit proof to substantiate these claims.

In the December 16, 2014 order, OAH required Ms. Amey to submit to OAH and Panama-Buena Vista by 5:00 p.m., on December 29, 2015, documentary proof of the passing of a parent of her husband and the federal court matters mentioned in her declaration. The order further stated that failure to timely submit the requested documentation may subject Ms. Amey to further sanctions. Ms. Amey failed to timely submit the required information.

On December 30, 2014, OAH issued an Order to Show Cause based on Ms. Amey's failure to submit the request information. The order required Ms. Amey to submit by close of business on January 7, 2015, documentary proof regarding the death of a parent of her husband and the two federal court matters that were the basis of her continuance request. Ms. Amey did not submit the requested information until 9:30 P.M. on January 8, 2015.¹

On December 30, 2015, District filed a request for sanctions based on Student's failure to produce required documentation in support of the December 15, 2014 continuance request.

¹ Ms. Amey did not produce the documents to District as it contained confidential information.

APPLICABLE LAW

In certain circumstances, 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. 1, § 1040; 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).)²

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); Cal. Code Regs., tit. 1, § 1040; Cal. Code Regs., tit. 5, § 3088, subd. (e).) The ALJ shall determine the reasonable expenses based upon a declaration setting forth specific expenses incurred as a result of the bad faith conduct. (Cal. Code Regs., tit. 1 § 1040(c).)

“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

The December 16, 2014 order explicitly required Ms. Amey to submit documentary proof regarding the death of a parent of her husband and the two federal court matters that were the basis of her continuance request. Ms. Amey failed to comply without OAH’s order without explanation. The December 30, 2014 order explicitly required Ms. Amey to produce documentation that supported the December 15, 2014 continuance request by January 7, 2015. While Ms. Amey’s compliance with the order was late, she did produce the requested

² Section 3088 refers to “presiding hearing officers.” However, the ALJ presiding over the hearing is the presiding officer. Government Code section 11405.80 states: “Presiding officer means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding.” This section makes clear that an ALJ who presides in an adjudicative proceeding is the “presiding officer,” a point confirmed in *Wyner v. Manhattan Beach Unified Sch. Dist.*, *supra*, 223 F.3d at page 1029, where the court stated, “Clearly, § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.”

information regarding the death of a parent of her husband and the two federal court matters that were the basis of her continuance request that established the existence of the events set forth in her supporting declaration. As to District's request for sanctions, although Ms. Amey only produced the requested documents at the eve of the order to show cause hearing, her failure was not due to bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Accordingly, the December 30, 2014 Order to Show Cause is withdrawn and District's request for sanctions is denied.

ORDER

1. The December 30, 2014 Order to Show Cause as to Why Student Should be Ordered to Pay Expenses is hereby withdrawn.
2. District's request for sanctions is denied.

DATE: January 15, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings