

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PLEASANT VALLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2021040386

ORDER DENYING PLEASANT VALLEY'S MOTION TO SHIFT
EXPENSES

NOVEMBER 12, 2021

Student's attorneys filed a request for a due process hearing that the Office of Administrative Hearings, called OAH, ordered to have been deemed filed on April 14, 2021. Pleasant Valley filed motions to continue the hearing on May 18, 2021 and May 27, 2021. The first motion was denied, but the second motion was granted on May 28, 2021, with OAH continuing the hearing and setting the hearing dates for June 15, 16 and 17, 2021.

On June 15, 2021, the case was called to order on the first scheduled day of hearing. Due to issues with the exhibits uploaded to Caselines by Student's attorneys, as detailed in the OAH Supplemental Order, dated June 15, 2021, the case was

continued and scheduled to resume on June 17, 2021. Student's attorney was ordered to refile the appropriate exhibits, in the proper Caselines format. Pleasant Valley's attorney was given sufficient time to review Student's refiled exhibits, and thereafter meet and confer with Student's attorney, prior to the resumption of the hearing.

On August 2, 2021, Pleasant Valley filed a Motion to Shift Costs/Sanctions upon Petitioners with OAH and alleged that Student's carelessness had resulted in Pleasant Valley incurring costs in the form of salary paid to two Pleasant Valley employees in order to have them appear and testify at hearing. Student opposed Pleasant Valley's motion and alleged that Pleasant Valley had contributed to delays in the prosecution of the hearing and that the costs to Pleasant Valley of presenting their two off-contract witnesses were not related to the Caselines issues.

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, Pleasant Valley’s Motion to Shift Costs fails because Pleasant Valley did not show that Student actions relating to uploading evidence into Caselines rose to the level of bad faith, frivolousness, or for the sole reason of causing unnecessary delay. Student’s initial Caselines upload was not in accordance with OAH orders, but fell far short of bad faith, frivolousness, or for the sole reason of causing unnecessary delay.

For Pleasant Valley's part, there was no showing that the cost of paying the witnesses for their off-contract time was not an expense that would occur notwithstanding any delay.

The record demonstrates that at various times both Pleasant Valley and Student contributed to delays in the prosecution of the hearing. Both Student and Pleasant Valley struggled to have witnesses available over the course of hearing, resulting in several days of partial hearing days. Nonetheless, no evidence has been presented by either Pleasant Valley or Student showing that either side engaged in conduct that was in bad faith, frivolous, or for the sole reason of causing unnecessary delay. As such, Pleasant Valley's motion to shift expenses is denied.

ORDER

Pleasant Valley's motion to shift expenses is denied.

IT IS SO ORDERED.

Ted Mann

Ted Mann

Administrative Law Judge

Office of Administrative Hearings