

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110422

ORDER DENYING MOTION FOR SANCTIONS

FEBRUARY 22, 2022

On February 10, 2022, Monrovia Unified School District filed with the Office of Administrative Hearings, called OAH, a Motion for Sanctions and Declarations in Support Thereof. Monrovia claimed that on February 1, 2022, Parent participated in a special education mediation via telephone. Monrovia asserted that Parent broadcasted the confidential mediation by playing it loudly on her speakerphone in Student's school's main office with staff and students present. Monrovia requested the following sanctions: dismissal of Student's due process case with prejudice, exclusion of Student's documentary and testimonial evidence regarding Student's excessive absences and 504 plan, an order to pay Monrovia's attorneys' fees associated with investigating and making the Motion for Sanctions and Declarations

in Support Thereof, and any other remedy the Administrative Law Judge deems just and fair.

On February 15, 2022, Student filed Petitioner's Opposition and Declaration in Response to Respondent's Request for Sanctions. Student conceded that Parent went to Student's school while engaged in the mediation via telephone. However, Parent insisted that she did not broadcast the mediation conversation on her speakerphone or allow any other persons to listen to the confidential conversation. Parent contended that she used her personal earphones to listen to the mediation while in the main office. Student argued that Parent did not disclose confidential settlement communications and did not act in bad faith or with the intent to harass or annoy the opposing party.

Both parties were permitted to file supplemental pleadings on February 18, 2022, because the initial pleadings filed with OAH were incomplete. The supplemental briefs were received and considered. This matter is resolved exclusively by the laws governing special education sanctions and expense shifting, as discussed more fully herein. Accordingly, the factual discrepancies need not be resolved.

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) & (e); 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, Monrovia failed to establish that the cost shifting statutes and regulations governing special education extend to mediation. OAH's sanction authority applies to special education due process hearings; OAH's limited authority to order sanctions does not apply to mediation. (Cal. Code. Regs., tit. 5, § 3088, subd. (a).)

An ALJ is a presiding officer who may sanction individuals in an adjudicative proceeding, defined as an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision. (Gov. Code, §§ 11405.80, 11405.20, and Cal. Code. Regs., tit. 5, § 3088.) Monrovia alleged that Parent's conduct arose during a special education mediation. Monrovia also alleged that the mediator, who was an ALJ, ordered parties to treat the statements made during mediation as confidential. Monrovia incorrectly characterizes the admonition related to confidentiality during mediation as "confidential orders of the ALJ." Mediation is a voluntary process in which the parties engage in confidential discussions to try to resolve issues raised in the complaint. The mediator did not have authority to make orders during the mediation because it was not an adjudicative proceeding.

OAH has the power to control its proceedings and persons before it pursuant to Code of Civil Procedure § 128.5, subdivision (a). However, as stated above, the alleged conduct occurred during a mediation not an adjudicative proceeding. Monrovia argued that Parent used the ALJ's position, status, and communication with the parties to intimidate potential witnesses and attempt to alter school records. Monrovia claimed that since Parent's actions occurred during the mediation process, with an ALJ serving as the mediator, OAH has authority to sanction this behavior as if it arose during a due process hearing. Monrovia failed to establish that an ALJ's authority to sanction improper behavior that arises during a due process hearing also extends to the

mediation process. As a result, Monrovia has not met its burden to establish OAH has authority to sanction the alleged behavior that allegedly occurred during mediation.

Monrovia's request for an order for Parent to pay Respondent's attorneys' fees associated with investigating and making the Motion for Sanctions and Declarations in Support Thereof is denied. Only presiding hearing officers may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) Here, Monrovia did not incur costs as a result of a motion pending before OAH based on a hearing officer placing expenses at issue. Rather, Monrovia requested reimbursement of costs incurred based upon their voluntary and independent investigation of an issue that arose during mediation. OAH declines to order sanctions, including costs shifting, based upon Monrovia bringing this motion.

ORDER

Monrovia's motion for sanctions is denied.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings