

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2026060151

ORDER GRANTING MOTION TO CLARIFY DISMISSAL
ORDER; DISMISSING WITH PREJUDICE; AND DENYING
MOTION FOR SANCTIONS

SEPTEMBER 10, 2026

On June 1, 2026, Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing naming Grossmont Union High School District, called Grossmont

Administrative Law Judge Alexa Hohensee heard this matter by videoconference on September 1, 2026. The Administrative Law Judge is called the ALJ.

At the hearing, Student called one witness and rested his case. The witness did not identify or authenticate any exhibits. Grossmont did not call any witnesses. The ALJ

set a briefing schedule for submission of arguments by closing brief and ended the evidentiary portion of the hearing.

After the hearing, on September 1, 2026, Student filed a request for dismissal “with or without prejudice, due to no authenticated exhibits.” On September 1, 2026, OAH issued a notice of case dismissal, but did not indicate whether the dismissal was with or without prejudice.

On September 4, 2026, Grossmont filed a motion for dismissal with prejudice, treated as a motion to clarify dismissal order, and a request for sanctions. On September 8, 2026, Student filed an opposition to the request for sanctions. Student did not file an opposition to the motion for dismissal with prejudice.

DISMISSAL

Neither the Individuals with Disabilities Education Act, called the IDEA, nor the California Administrative Procedures Act, specifically address requests for dismissal after a due process hearing commences. Although not binding in special education matters, the Code of Civil Procedure provides guidance in this situation. Specifically, Code of Civil Procedure section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion thereof, with or without prejudice prior to the actual trial commencing. Code of Civil Procedure section 581, subdivision (e), states that after actual commencement of trial, a court will dismiss a complaint with prejudice if the plaintiff’s requests a dismissal, unless all parties consent to dismissal without prejudice or the court finds good cause for a dismissal without prejudice. Commencement of trial includes the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

Here, Student called a witness who was sworn in and testified. Therefore, the request for dismissal was made after actual commencement of the hearing. The parties have not mutually consented to a dismissal without prejudice, and Student has not shown good cause for dismissal without prejudice.

Accordingly, the dismissal in this matter is clarified to be with prejudice, and will be entered in the record as a dismissal with prejudice.

This Order does not prevent Student from filing a due process hearing request on issues not alleged in this matter.

SANCTIONS

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 ordered 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); Gov. Code, §11455.30.)

Actions and tactics are frivolous if totally and completely without merit or is done for the sole purpose of harassing the opposing party. (Cal Code Regs. tit. 1, § 1040, subd. (a)(2).) The ALJ must determine the reasonable expenses based upon testimony under oath or a declaration setting forth specific expenses incurred as a result of the bad faith conduct. (Cal. Code Regs. tit. 1, §1040(c).)

Grossmont contends that the conduct of Student's attorney was frivolous and caused Grossmont unnecessary expense because:

- Student attempted to include new issues in his prehearing conference, or PHC, statement, which the ALJ at the PHC disallowed and said required a motion to amend.
- Student filed a motion to amend, which was denied, and Student's attorney was admonished not to carefully review documents filed with OAH if he used use artificial intelligence to draft them.
- Student attempted to serve subpoenas on witnesses employed by Grossmont prior to meeting and conferring with Grossmont's attorney.
- Student's attorney appeared at hearing without his witness ready to testify.

Grossmont asserts it spent considerable time preparing for mediation and hearing, and communicating with Student's attorney, including arranging to have its own witnesses available to testify and taking them away from serving children with disabilities. Grossmont concludes Student's actions were frivolous and meritless, and entitle it to an unidentified amount of attorney's fees.

Grossmont's motion for sanctions is supported by the sworn declaration of its attorney, who does not give a total sought, but provides various "attorney's fees and costs" lump sums, often by month. These include for preparing for settlement discussions, opposing Student's motion to amend, opposing Student's motion regarding interference with service of subpoenas, sums related to hearing, sums related to the current motion, and an estimated, non-itemized "invoice" for August of \$34,486.50. No actual invoices itemizing the time billed or the costs were attached to the declaration.

Student's opposition, supported by the declaration of Student's attorney, explains that Student's attorney was acting pro bono and has a developmental disability that affects his ability to process information. He had never taken a case beyond mediation before and was unfamiliar with OAH's hearing procedures. Student's attorney describes in detail how he thought what he was doing was reasonable and necessary at each step of the proceeding. He notes that the subpoenas he attempted to serve were in a different case brought by Grossmont, and were for the witnesses on Grossmont's witness list in that case.

Student's attorney notes that he understood from the ALJ's explanation at hearing that he had not authenticated any exhibits for his client, and for that reason requested a dismissal with or without prejudice. He withdrew from representation of Student, and although he understands that Parent filed another case on behalf of Student, he had no responsibility for that filing. Student's attorney concedes his errors were regrettable, but never frivolous or intended to cause unnecessary delay or harassment.

Grossmont has failed to demonstrate that Student's conduct, or that of his attorney, was frivolous. Due to strategy and procedural errors, and this Order entering dismissal with prejudice, Student's claims were not, and will not, be heard on the merits. However, the dismissal, in and of itself, does not demonstrate that Student's case was totally and completely without merit for sanctions purposes.

Similarly, Grossmont has failed to show that any of Student's actions were without merit or taken for the sole purpose of harassing Grossmont. Student attempted to add issues to his due process hearing request, or complaint, at the PHC, and was told by the ALJ a motion to amend would be required. Student filed a motion to amend, and the fact that the ALJ determined the new claim should be pleaded in a separate action

does not demonstrate that the motion to amend was without merit or that Student sought to harass Grossmont by adding that claim. The ALJ's admonition that Student's attorney be more careful in checking documents drafted with AI in no way demonstrates an intention to harass Grossmont.

Student's motion for interference with service of subpoenas involved a second case brought by Grossmont, where Student sought to subpoena witnesses designated by Grossmont. Unfortunately, Student filed his motion in the wrong case, and was admonished by the ALJ for attempting to serve witnesses without meeting and conferring with Grossmont's attorney in this case. In addition, the education law that prevents adults from entering school grounds, even to serve subpoenas, is unfamiliar to many practitioners. Student established that the motion for interference with service of subpoenas was in advocacy for his client's prehearing rights, and not without merit or for the sole purpose of harassing Grossmont.

Student arrived at hearing unprepared and unfamiliar with OAH policies and procedures. However, Student's attorney believed that uploading exhibits to OAH's electronic exhibit system would be sufficient for the ALJ to consider them as evidence, and that his sole witness would establish Student's ability to thrive in a general education classroom. This confidence was misplaced, because as explained by the ALJ at hearing, exhibits must be identified and authenticated as well as relevant and admissible, and the placement issue had been disallowed as an amendment. Student's attorney may have been misguided in his approach, but that does not establish that his actions were totally and completely without merit or for the sole purpose of harassing Grossmont, as he believed at the time he was proving up Student's case.

Grossmont has made no showing that Student's attorney acted totally or completely without merit, or for the sole purpose of harassing Grossmont. Like every

other school district defending claims of a denial of a free appropriate public education, Grossmont was prepared to call witnesses, which may have required taking teachers and providers away from serving children with disabilities, but here did not. In addition, Grossmont prevailed quickly, with a short hearing, a prompt dismissal, and no need for a closing brief. It is difficult to envision a more favorable result for Grossmont.

Grossmont did not set forth in its attorney's declaration specific expenses incurred as a result of bad faith conduct. There was no showing that preparing for mediation of Student's claims was the result of bad faith conduct. Or that preparation for the PHC or hearing would not have been required for any hearing. More fatally, the information provided was not specific, and the undersigned ALJ had no way of determining what the costs were for, how they were calculated, and whether they were reasonable. Therefore, Grossmont's showing of reasonable expenses incurred as a result of bad faith conduct was insufficient to support an award of sanctions.

Accordingly, for the reasons stated, Grossmont's motion for sanctions is denied.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings