BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT, LONG BEACH UNIFIED SCHOOL DISTRICT, LOS ANGELES COUNTY DEPARTMENT OF EDUCATION, AND GARVEY SCHOOL DISTRICT	OAH CASE NO. 2013120327 ORDER DENYING STUDENT'S MOTION TO COMPEL AND FOR SANCTIONS

On January 23, 2014, Student filed a Motion to Compel and for Sanctions, arguing that Norwalk La-Mirada Unified School District (District) had knowingly and willfully failed to furnish Student's educational records, had been rude and abusive over the telephone to Student's counsel, had unfairly called her a "liar" and had unfairly characterized Student's case as "petty." On January 28, 2014, District filed an Opposition. On January 28, 2014, Student filed a Reply. The Motion, Opposition and Reply are replete with the recounting of telephonic conversations and emails between the lawyers for the parties, disputing their content. Each attorney characterizes the opposing attorney's conduct as rude, harassing, in bad faith and the like. As discussed below, the Motion is denied in its entirety.

Motion to Compel

IDEA grants parents of a child with a disability the right to examine all relevant records relating to their child's "identification, evaluation and educational placement." (20 U.S.C. §1415(b)(1).) Each local educational agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The agency must comply with a request without unnecessary delay (See 34 C.F.R. §300.613(a) (2006). All parents have the right to receive copies of all school records within five business days after parents make a request. (Ed. Code, §56504.)

Here, Student requested copies of educational records by a letter dated January 8, 2014. According to District, it emailed Student's counsel within five business days, on January 14, 2014, inviting her to come to District to review the records. According to Student's counsel, she received no such email, and even if it were sent it was improper in that it did not furnish a copy of the records to her location. By January 21, 2014, Student's counsel had not received any records and she wrote a January 22, 2014, letter demanding them. There followed a telephone call on January 22, 2014, between counsel, the contents of

which are vigorously disputed. This Motion. followed. Thereafter, on January 24, 2014, District provided Student's records to counsel. On January 27, 2014, Student wrote a letter stating that the production was incomplete. District supplemented the production with additional documents on January 28, 2014.

Under these circumstances, where the documents have ultimately been produced, the motion to compel is moot. District produced records on January 24 and when advised the production was incomplete, it supplemented the production on January 28, the same day the Opposition and Reply were filed herein. It thus appears that the substance of the Motion has been resolved. Furthermore, Student amended the complaint as of January 23, 2014, re-setting the hearing timelines, and thereby rendering moot any contention that Student's due process hearing rights had been prejudiced by any delay in production. The Motion to Compel is denied. The remaining issues, concerning alleged delay and attorney conduct, are addressed below.

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."].) 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 successor to the California Special Education Hearing Office) 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 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.)

Here, there is insufficient evidence of bad faith actions or tactics on District's part, and Student's motion for sanctions is denied. District contends it emailed Student's counsel on January 14, 2014, and its Opposition contains a copy of that email, responding to Student's records January 8, 2014, records request within five business days. Any subsequent delay appears to have resulted from the non-receipt of that email, and thus appears to have been a misunderstanding. The remaining issues, pertaining to the alleged ad hominem attacks in the January 22, 2014, telephone call between counsel, are disputed and insufficient to support an order of sanctions.

ORDER

Students Motion to Compel and for Sanctions is denied.

Dated: January 30, 2014

/s/
JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings