BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020010925

ORDER DENYING MOTION FOR SANCTIONS

MARCH 9, 2020

On January 27, 2020, Parent on behalf of Student filed an Expedited Request for Due Process Hearing, referred to as an expedited complaint with the Office of Administrative Hearings, naming Corona-Norco Unified School District. The Office of Administrative Hearings is referred to as OAH.

On February 6, 2020, Corona-Norco Unified filed a Motion for Sanctions. Student filed an opposition on February 6, 2020. Corona-Norco Unified filed a reply to the opposition on February 7, 2020.

On February 14, 2020, Student filed a Notice of Dismissal of her expedited due process hearing request. OAH issued a notice of dismissal on February 18, 2020.

MOTION FOR SANCTIONS

Corona-Norco Unified contends Parent should be sanctioned for bad faith acts intended to harass Corona-Norco Unified. Parent on behalf of Student filed an expedited complaint on October 31, 2019, in OAH case number 2019110054. Parent did not participate in a resolution session, but did participate in a mediation with Corona-Norco Unified. Student withdrew her expedited complaint on November 22, 2019.

On November 27, 2019, Parent on behalf of Student filed an expedited complaint in OAH case number 2019111029, raising the same claims. Parent and Corona-Norco Unified participated in a resolution session on December 9, 2019. On January 15, 2020, one day before the start of the expedited hearing, Student withdrew her expedited complaint.

On January 27, 2020, Parent on behalf of Student filed the expedited complaint at issue here. This expedited complaint raised the same claims as the previous two.

Corona-Norco Unified argues Parent's conduct through the three expedited cases have been intended to harass the school district. Corona-Norco Unified argues that Parent, with the assistance of her advocate, has harassed Corona-Norco Unified by alleging irrelevant, inflammatory allegations, repeatedly failing to communicate with it, attend resolution session for two of the cases, and withdrawing the expedited complaints only after Corona-Norco Unified expended considerable time and resources.

Student contends Parent's conduct was not aimed to harass Corona-Norco Unified. Student argues the motions to withdraw the expedited complaints in November 2019 and January 2020 were due to circumstances related to Student's juvenile court matter, Student's running away, and Parent's medical condition which consumed a great deal of time and energy from Parent, and caused Parent considerable

worry. Therefore, Student claims Parent was not prepared to move forward with the expedited hearings.

APPLICABLE LAW AND DISCUSSION

In certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to 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 as defined in Section 128.5 of the Code of Civil Procedure. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088, subd. (e); 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 administrative law judge presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

The administrative law judge 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).) 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.)

The California Court of Appeal discussed what is required to impose sanctions under California Code of Civil Procedure section 128.5 in the case of *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635. In discussing what constitutes bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, the court stated the action taken by the party or its attorney must be solely for the purpose of harassing an opposing party. Whether an action is frivolous is governed by an objective standard: any reasonable attorney would agree it is totally and completely without merit. There must also be a showing of an improper purpose, such as subjective bad faith on the part of the attorney or party to be sanctioned. (*Levy v. Blum*, *supra*, 92 Cal.App.4th at p. 635.)

Here, Corona-Norco Unified filed its motion for sanctions following the dismissals of the first two expedited complaints. The information does not support a finding that Student filed and withdrew those expedited complaints to harass Corona-Norco Unified. In light of the circumstance involving Student's juvenile court matter, her running away, and Parent's medical concern, the information does not support a finding the filings were frivolous and the withdrawals bad faith acts.

In addition, though Parent has not been as responsive to communications with Corona-Norco Unified as one would expect, Parent has not completely ignored the district or the expedited hearing process. The parties participated in a mediation in an attempt to resolve the expedited claims in which all three expedited cases were based on. Parent has also been engaged in the matters by filing motions and responses and participating in a prehearing conference in an effort to prosecute Student's case. Parent's conduct to date do not rise to the level of bad faith acts or frivolous tactics to warrant sanctions. Accordingly, Corona-Norco Unified's motion for sanctions is denied.

However, sanctions may be appropriate if Parent on behalf of Student should file a fourth expedited complaint against Corona-Norco Unified based on the same claims as the previous three expedited complaints and demonstrate a continued pattern of ignoring communications with Corona-Norco Unified that results in unnecessary expenditures by Corona-Norco Unified or unnecessary delays, alleging inflammatory facts that are proven to be irrelevant at hearing, or withdrawing the fourth expedited complaint without a showing of good cause.

ORDER

1. Corona-Norco Unified's Motion for Sanctions is denied.

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Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings