BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030980

ORDER DENYING MOTION FOR SANCTIONS

APRIL 29, 2025

On March 25, 2025, Student filed a request for due process hearing, called a complaint with the Office of Administrative Hearings, called OAH, naming San Juan Unified School District, called San Juan. The complaint pled expedited and non-expedited issues for hearing and OAH set hearing dates for the expedited and non-expedited hearings. On April 3, 2025, after considering San Juan's notice of insufficiency, OAH found Student's expedited issues sufficient, found several of Student's non-expedited issues insufficient and ordered Student to file an amended complaint. On April 17, 2025, Student filed an amended complaint and OAH retained the expedited hearing dates and reset the non-expedited hearing dates.

At the April 21, 2025 PHC, the expedited hearing issue as agreed to by the parties was:

Did San Juan violate title 20 United States Code section 1415(k) by failing to conduct a manifestation determination review after the February 11, 2025 incident?

At the PHC, San Juan's attorney represented she would be filing a motion for sanctions because an expedited hearing was unwarranted as Student had only been suspended for one day as a result of the February 11, 2025, incident. The ALJ ordered the parties to meet and confer as to the total number of days Student had been suspended in preparation for responding to the ALJ's inquiries on the first day of hearing.

On April 22, 2025, San Juan filed a motion for sanctions. San Juan argued Student's expedited issue that it failed to conduct a manifestation determination review after suspending Student for one day was frivolous and sanctionable conduct. San Juan seeks to recover $5,284 in attorneys' fees in the defense of Student's expedited case. San Juan supported the motion with a declaration under the penalty of perjury from attorney Marella Gutierrez.

On April 23, 2025, Student filed a request to vacate the expedited hearing dates by specifying withdrawal of one expedited issue, Issue 14, in his complaint. Because other references to expedited claims remained in the complaint, OAH informed Student it could not vacate the expedited hearing dates. On April 24, 2025, Student withdrew the entire complaint and OAH issued a dismissal of the entire case.

On April 25, 2025, Student filed an opposition arguing that although San Juan contends it suspended Student for only one day, its February 12, 2025 suspension notice did not specify the duration of the suspension. The suspension notice stated Student was to be kept away from "any school campus or attend any school activities during the

period of suspension." (February 12, 2025 Notice of Suspension, Exhibit A to the Opposition.) Student stated Parent interpreted San Juan suspended Student indefinitely based on the February 12, 2025 suspension notice and kept Student from school in compliance with the notice. Student supported his opposition with a declaration under the penalty of perjury from attorney Michelle Wilkolaski.

A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(i).)

When a district seeks to change a special education child's educational placement for more than 10 days as a result of a violation of a student code of conduct, the district must convene an IEP meeting to determine whether the child's violation was a manifestation of the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530.) This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).) A manifestation determination must be accomplished within 10 school days of the decision to change the student's placement. (*Ibid.*)

In certain circumstances, an ALJ 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. 1, § 1040; 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).)

Section 3088 refers to "presiding hearing officers." Government Code section 11405.80 states: "Presiding officer means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding." This section makes clear that an ALJ who presides in an adjudicative proceeding is the "presiding officer," a point confirmed in *Wyner v. Manhattan Beach Unified Sch. Dist., supra,* 223 F. 3d at p. 1029. (*Ibid.*)

An ALJ presiding over a hearing may "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. 1, § 1040; Cal. Code. Regs., tit. 5, § 3088, subd. (e).) 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 (*West Coast*).)

The ALJ 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).) Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates or employees. (Code Civ. Proc., § 128.5, subd. (f)(1)(C).) An order of sanctions shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. (Code Civ. Proc., § 128.5, subd. (f)(2).) If warranted for effective deterrence, an order may direct payment of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the action or tactic. (*Id.*) The courts shall vigorously use their sanction authority to deter improper actions or tactics. (Code Civ. Proc., § 128.5, subd. (g); see also *Letter to Irby* (February 12, 2010) [OSEP suggested

a school district's remedy could include a reduction or shifting attorney's fees to the parent or its attorney.].)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure.

San Juan did not prove Student's request for a manifestation determination hearing was in bad faith or frivolous. San Juan's February 12, 2025 suspension notice did not support San Juan only suspended Student one day, as San Juan contends. The suspension notice was ambiguous on the suspension duration. Further, a ruling on the merits, after an evidentiary hearing, would be required to determine the total days San Juan suspended Student during the 2024-2025 school year, including pursuant to the February 12, 2025 suspension notice. (See 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530.) San Juan did not show Student, or his attorneys, engaged in bad faith actions or frivolous tactics solely intended to cause unnecessary delay justifying sanctions. Accordingly, the motion for sanctions is denied.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings