BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT

AND TRACY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110151

ORDER DENYING STOCKTON'S MOTION FOR SANCTIONS AND TO SHIFT EXPENSES

MARCH 12, 2024

On December 19, 2023, Stockton Unified School District filed a Motion for Sanctions and to Shift Expenses against Student's attorneys on grounds they engaged in litigation actions and tactics in bad faith. Administrative Law Judge Robert G. Martin, Office of Administrative Hearings, heard and ruled on Stockton's motion on January 22, 2024. Attorney Sheila Bayne appeared on behalf of Student. Attorneys Dee Ana Hassanpour and Rebecca Diddams appeared on behalf of Stockton. Attorney Krista Tidwell appeared on behalf of Tracy Unified School District. This order documents the prior ruling.

In certain circumstances, an ALJ presiding over a special education proceeding may shift expenses from one party to another. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029. Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

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).) "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" under section 128.5 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*).) An attorney may be sanctioned because they fail to call the court and opposing counsel to alert them to their inability to attend a hearing. (*Ibid.*) Such conduct is "discourteous . . . and not in good faith" and Section 128.5 "does not require willfulness to be an aspect of the [improper] actions or tactics." (*Id.*, at p. 702-703, citing *In Re Marriage of Gumabao* (1984) 150 Cal.App.3d 572, 577 (*Gumabao*).)

In this matter, the parties were ordered at a prehearing conference on December 11, 2023, to meet and confer by 3:00 p.m. on Thursday, December 14, 2023, in preparation for the hearing scheduled to start on December 19, 2023. The parties were to discuss the schedule of witnesses for the hearing, eliminating any duplicate exhibits, possible stipulations of fact or law, and any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, or subpoenas.

After close of business on Monday, December 18, 2023, Stockton filed its motion for sanctions. Stockton made its motion on grounds that Student's attorneys had failed to respond to an email sent to them by Stockton attorney Hassanpour on December 14, 2023, at 3:08 p.m., seeking to hold the meet and confer ordered by OAH. Stockton contended Student's attorneys ignored further emails from Stockton on December 15 and 18, 2023, requesting that Student meet and confer.

On Tuesday, December 19, 2023, at 6:20 a.m., Student filed a Notice of Withdrawal of Student's request for due process hearing. Student's Notice of Withdrawal contained no explanation why Student was withdrawing their request. OAH vacated the hearing, which was scheduled to start at 9:30 a.m. that day. Student initially did not respond to Stockton's motion for sanctions.

On December 27, 2023, OAH issued an Order setting a January 12, 2024, hearing on Stockton's motion for sanctions, and a briefing schedule with a deadline of January 4, 2024, for further motions or briefing by Stockton and Tracy on the issue of sanctions, and a January 10, 2024, deadline for Student to file a response. Tracy did not file any motion for sanctions, or other briefing. Stockton failed to file a timely brief on January 4, 2024, instead filing a response in support of its motion for sanctions on January 10, 2024. In addition to seeking sanctions for the failure of Student's attorneys to participate in the meet and confer process, Stockton sought sanctions for the failure of

Student's attorneys to notify Stockton until three hours before the start of hearing that the matter would not be proceeding. Student filed a timely response to Stockton's motion on January 10, 2024, and on January 11, 2024, filed a motion to strike Stockton's untimely response in support of Stockton's motion for sanctions. On January 12, 2024, Stockton filed a response to Student's motion to strike. The supporting declaration of Stockton's attorney stated Stockton had inadvertently failed to notice OAH's briefing schedule for the motion for sanctions, because OAH had served it with another order in the case. OAH denied Student's motion to strike Stockton's brief, but to provide Student time to respond to Stockton's late-filed brief, OAH continued the hearing on the motion for sanctions to January 22, 2024, and gave Student leave to file a response by January 18, 2024.

OAH held the hearing on Stockton's motion for sanctions on January 22, 2024. From the briefs and declarations filed by the parties, and discussion with the parties at the hearing, it became clear the relevant facts regarding the actions or tactics of Student's counsel in this matter were different from how they appeared on December 27, 2023, when OAH issued its order setting a hearing on Stockton's motion for sanctions. At that time, based on Stockton's December 18, 2023 motion for sanctions and Student's withdrawal of Student's due process hearing request on December 19, 2023, and in the absence of any response from Student to Stockton's motion, it appeared Student had gone silent after the December 11, 2023 prehearing conference, ignored all Stockton's attempts to meet and confer, and then withdrew its due process hearing request just before the start of the hearing. However, the subsequent briefs, declarations, and discussion confirmed that, after Stockton attorney Hassanpour sent her December 14, 2023, email, James Peters, a representative of Student's attorney Bayne, responded within an hour. Peters emailed Stockton attorneys Diddams and Anne Sherlock, who were the attorneys Stockton listed in its Notice of Representation filed November 6, 2023, but did not include attorney Hassanpour as a recipient.

Hassanpour was unaware of Peters' email until sometime after filing Stockton's motion for sanctions. Peters' email explained that attorney Bayne was ill but had prepared a tentative joint list of witnesses for the hearing that Peters attached. Peters asked attorneys Sherlock and Diddams to reply if there was anything else Bayne needed to address. Sherlock and Diddams did not contact Student's attorneys regarding any additional scheduling matters that needed to be addressed. On Saturday, December 16, 2023, at 4:13 p.m., Peters emailed Sherlock and Diddams a settlement offer on Bayne's behalf, with the note that the offer would expire in six hours. Diddams responded to the offer by email on Sunday, December 17, 2023, and left a follow-up phone message for Peters on December 18, 2023. Bayne remained very ill with flu-like symptoms, and her office did not respond before withdrawing Student's complaint early on December 19, 2023, at Parent's request.

Although discourteous acts may justify sanctions (*Gumabao*, *supra*, 150 Cal.App.3d at p. 577), the failure of Student's attorney to communicate directly with opposing counsel in the meet and confer process, and to provide earlier notice of Parent's decision to not proceed to hearing was excusable considering the attorney's serious illness and did not rise to the level of frivolous bad faith actions or tactics in this case.

ORDER

Stockton's motion for sanctions is denied.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings