BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

Ukiah Unified School District,

and

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2024010195

OAH CASE NUMBER 2023100750

ORDER DENYING MOTION TO SHIFT EXPENSES

FEBRUARY 15, 2024

Student brings this motion for sanctions on the grounds that Ukiah's request for reconsideration of the order denying its peremptory challenge of the undersigned was without merit and frivolous. Student seeks $2,100 in sanctions for expenses incurred as a result of the motion. Ukiah opposes the motion on the grounds that Student has failed to meet his burden of establishing the Ukiah's actions were frivolous or without merit. In this case, Student has failed to offer any evidence that Ukiah's motion was filed in bad faith; or of actions or tactics that are frivolous or solely intended to cause unnecessary delay, thus meriting sanctions. The filing of a motion is not, in and of itself, evidence of bad faith.

APPLICABLE LAW

In certain circumstances, a Special Education Division administrative law judge, known as an ALJ, is authorized to shift expenses from one party to another. (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."].)

An ALJ 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. 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.) However, the imposition of sanctions does require a showing that the actions were meritless *or* frivolous *and* that the action was pursued in bad faith. (*Campbell v. Cal Gard Sur. Services, Inc.* (1998) 62 Cal. App. 4th 563, 574, emphasis in the original.)

Here, following Student's peremptory challenge on January 12, 2024, the case was reassigned to the undersigned. The prehearing conference was convened at 1:00 PM. Ukiah did not make any motions or raise any preliminary concerns when the ALJ gave parties the opportunity to raise preliminary matters prior to proceeding with the prehearing conference. Ukiah did not file its peremptory challenge to the ALJ conducting the prehearing conference until after the prehearing conference had begun. During the prehearing conference, the undersigned granted Ukiah's motion to consolidate the two cases.

Ukiah's late peremptory challenge was denied. Ukiah then filed a motion for reconsideration of that ruling, arguing that

- its attorney mistakenly believed they had until the end of the day on January 12, 2024, to file a peremptory challenge;
- Ukiah believes it had another opportunity to file a peremptory challenge in its due process case against Student because no judge had been assigned to Ukiah's case at the time the motion for reconsideration was filed.; and
- its late-filed peremptory challenge should be excused because Ukiah "substantially complied with the timeline."

Student filed an opposition to the motion for reconsideration. Presiding Judge Tara Doss denied Ukiah's motion for reconsideration on January 22, 2024. As mentioned previously, Student's motion for sanctions followed.

Student argues that he should be awarded sanctions because Ukiah's attorney should be held to account for filing a motion for reconsideration based on her erroneous understanding of the law. Student asserts Ukiah's counsel should have

known that her legal error was not grounds for reconsideration. Student asserts that, without sanctions, Ukiah's counsel will file similar motions requiring Student to expend resources to oppose them.

Student failed to meet his burden of establishing that Ukiah's filing was in bad faith, frivolous, or intended to cause unnecessary delay. A determination of bad faith is a high standard intended to dissuade counsel from seeking sanctions for every error. A misunderstanding of the law, without more, does not rise to the level of a bad faith action or tactic meriting sanctions. (*Campbell, supra,* 62 Cal. App. 4th at p. 574.) A bad faith action or tactic is an action based on an improper purpose. An improper purpose is a purpose to harass or to cause unnecessary delay, or needless increase in the cost of litigation. (*C.W. v. Capistrano, (9th Cir. 2015), 784, F. 3d 1237, 1244.)* Student offered no facts indicating the request for reconsideration was filed for an improper purpose. As

student has not met his burden of establishing the basis for sanctions, the question of whether the amount of sanctions requested was adequately supported will not be reached.

Student's motion for sanctions is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings