BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025050387

# ORDER DENYING MOTIONS FOR SANCTIONS

JUNE 25, 2025

On June 16, 2025, Student filed a pleading entitled "Notice of District's Serious Procedural Violations and Prejudicial Conduct." The Notice will be treated as a motion for sanctions. In the Notice, Student alleged a variety of grievances relating to Mt. Diablo's handling of his case prior to hearing. Some of the grievances alleged that Mt. Diablo filed various documents late, or filed them at strategic times calculated to hide important pleadings from Student. Others complained of alleged defects in service of process or notice.

In the most important of the grievances, Student asserted that certain assessments of Student were flawed, that Mt. Diablo had failed to consider an independent assessment, and that Mt. Diablo delayed the independent educational evaluation process. These contentions echoed allegations in Student's complaint. In the

Notice, Student requested that OAH take judicial notice of his version of these events, and order relief accordingly.

However, judicial notice, or its administrative equivalent, official notice, does not extend to disputed factual propositions. By analogy to Evidence Code section 452, subdivisions (g) and (h), judicial notice may be taken of facts and propositions that are not reasonably subject to dispute. All of the factual claims for which Student seeks official notice are in dispute, and are not proper subjects for official notice.

On June 18, 2025, Student filed a pleading entitled "Student's Complaint to OAH Attorney Misconduct and Harassment of Parent Advocate." This pleading will also be regarded as a motion. In the document, Student asserted that Mt. Diablo's attorney, David Mishook, harassed and attempted to humiliate Dr. Sara Adams, Parents' advocate, by conducting an unauthorized and inappropriate investigation into Dr. Adams's professional credentials and personal history.

In certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to the Office of Administrative Hearings. (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."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

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 entity that is responsible for conducting due process hearings) 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) & €; see Gov. Code, § 11455.30, subd. (a).) 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).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "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 gravamen of Student's claim relates to statements by Dr. Adams that she holds a Ph.D. degree from Cambridge University. In a series of emails, Mr. Mishook questioned this assertion and asked for details. Dr. Adams was not required to respond, but responded that the existence of her Ph.D. from Cambridge was conclusively proved by clicking on a Universal Resource Locator,

https://www.repository.cam.ac.uk/handle/1810/379919. That link leads to an internal web page on the Cambridge University website that functions as a repository of theses written by Cambridge students, including a thesis by Dr. Adams. The text that introduces her thesis states that she is the author and has a Ph.D. from Cambridge.

Mr. Mishook was not satisfied by this response and asked for additional details. Dr. Adams responded by accusing Mr. Mishook and Mt. Diablo of having a wide variety of unscrupulous intentions that were directed to frustrating Parents' attempt to obtain an adequate education for Student, and additionally intended to intimidate, harass, and humiliate Dr. Adams. In her emails, Dr. Adams took the position that the Universal Resource Locator she had furnished was conclusive and definitive proof of her Ph.D. from Cambridge, and could not in good faith be questioned. Dr. Adams reasoned from that conclusion that any further attempt to investigate the circumstances surrounding the award of her degree had to be in bad faith, and done for the unsavory purposes mentioned above.

Mr. Mishook was not persuaded by this claim either, and continued to investigate. Dr. Adams is listed by Student as both an expert witness and a percipient witness in the upcoming hearing, and it is routine for opposing counsel to investigate the credentials and credibility of important opposition witnesses. But Student continues to insist that the proof of the award of a Ph.D. to Dr. Adams by Cambridge, the web page cited, is so clear and dispositive that it was sanctionable misconduct for Mr. Mishook to investigate further.

Student's argument is not persuasive. The ALJ has examined the web page in question and concluded that, by itself, the web page is far less persuasive proof of the award of Dr. Adams's degree than Student asserts. Although Dr. Adams's thesis is accompanied by an introduction stating that she has such a degree, there is no way to tell, from the web page itself, who wrote the introduction. For all the web page shows, the introduction could have been written by a high Cambridge official, or by the operator of the repository, or by Dr. Adams herself, or by someone else.

Dr. Adams revealed her underlying premise in an email to Mr. Mishook as follows: "[f]eel free to contact the University to confirm that only granted PhD holders have their theses published on their website." This statement that only granted Ph.D. holders have their thesis published on Cambridge's website may be correct, but that premise is not stated on the web page. As a result, the web page, by itself, is not definitive or conclusive proof of Cambridge's award of a Ph.D. to Dr. Adams, and it was not unreasonable for Mr. Mishook to investigate further. His actions in conducting further questioning of Dr. Adams cannot be assumed to demonstrate bad faith or any intention to intimidate or harass her.

Mr. Mishook's conduct was not frivolous. It was not intended to harass or delay Dr. Adams or Student, or to accomplish any other impermissible purpose. Mr. Mishook's conduct was not sanctionable misconduct, and Student's contention otherwise must be rejected.

## ORDER

1. Student's motion entitled "Notice of District's Serious Procedural Violations and Prejudicial Conduct," filed on June 16, 2025, is denied.
2. Student's motion entitled "Student's Complaint to OAH Attorney Misconduct and Harassment of Parent Advocate," filed on June 18, 2025, is denied.

Charles Marson
Administrative Law Judge
Office of Administrative Hearings

**Signature:** *Charles Marson*
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