BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022050576

ORDER CONTINUING PREHEARING CONFERENCE AND HEARING, AND ORDER TO SHOW CAUSE WHY PARTIES AND ATTORNEYS SHOULD NOT BE ORDERED TO PAY OAH EXPENSES

JUNE 28, 2022

As detailed further below, Student filed and served his due process hearing request opening this matter on May 12, 2022. Since then, respondent William S. Hart Union High School District, called Hart, has not appeared in this matter, and neither Student, nor Hart, has filed any document, or communicated in any way, with the Office of Administrative Hearings, called OAH. Neither party appeared at the June 20, 2022 prehearing conference in this matter, or at the June 24, 2022 hearing

set for an Order to Show Cause why Student's case should not be dismissed for inactivity. Both parties failed to respond to the Scheduling Order that OAH served on them on May 17, 2022, and have failed to respond to repeated email and telephone communications from OAH concerning the June 20, 2022 prehearing conference and June 24, 2022 order to show cause hearing.

The parties' failure to participate in this case or respond to OAH has caused OAH to incur costs in the amount of $2,5573.25 preparing for the June 20, 2022 prehearing conference, creating an electronic evidence file for the parties to upload hearing exhibits for the on-calendar hearing, preparing for the June 24, 2022 order to show cause hearing, and preparing this order.

ORDER CONTINUING HEARING

Hearing of this matter, previously set for June 28 through 30, 2022, is continued to August 9 through 11, 2022.

ORDER TO SHOW CAUSE

On May 12, 2022, Student's attorneys Marc Levine and Jerid Maybaum filed a request for due process hearing with OAH, naming Hart. Student served the due process hearing request by facsimile on Daniel Gonzalez, Hart's counsel of record in other matters pending before OAH. Gonzalez has not appeared in this matter on behalf of Hart. On May 17, 2022, OAH served on both parties a Scheduling Order setting a videoconference prehearing conference, called a PHC, for June 20, 2022, at 10:00 AM, and a due process hearing for June 28 through 30, 2022. OAH served the Scheduling Order by email service to the email addresses provided by Levine and Maybaum, and by email service to Hart's previously designated employee for service

of documents, Special Education Director Joanna White, at email addresses previously provided by Hart.

Hart has not appeared in this action.

On June 16, 2022, OAH emailed both parties electronic invitations to the videoconference PHC, and on June 18, 2022, OAH emailed both parties electronic invitations to the CaseCenter online service for the parties to upload electronic hearing exhibits.

Neither party filed a PHC statement, as required. Neither party appeared at the June 20, 2022 PHC.

On June 20, 2022, OAH served on both parties an Order to Show Cause why this case should not be dismissed for inactivity. OAH ordered Student to immediately send in a request to dismiss the case, if the case should be dismissed, or to show cause in writing no later than June 22, 2022, at 5:00 PM as to why this matter should not be dismissed for lack of activity. The June 20, 2022 order set a videoconference hearing of the order to show cause for June 24, 2022, at 10:00 AM.

Student did not file a dismissal or any response to the Order to Show Cause. On June 22, 2022, OAH staff contacted both parties by telephone and left voice messages asking if the matter was to proceed. On June 23, 2022, OAH emailed both parties electronic invitations to the videoconference order to show cause. Neither party filed any document with OAH, or contacted OAH.

On June 24, 2022, the administrative law judge opened the videoconference link for the order to show cause hearing from 9:59 AM to 10:30 AM. Neither party appeared for the videoconference hearing on the Order to Show Cause.

During the same June 16 through 24, 2022 period during which the parties failed to respond to multiple communications from OAH concerning this matter, Student's counsel was active in many other matters pending before OAH. Student's counsel filed a complaint on June 16, 2022 in OAH Case number 2022060589, filed a complaint on June 17, 2022 in OAH Case number 2022060667, filed a complaint on June 20, 2022 in OAH Case number 2022060602, filed a complaint on June 22, 2022 in OAH Case number 2022060648, filed a notice of dismissal in OAH Case number 2022040078, and filed a notice of dismissal in OAH case number 2022030850. These filing indicate Student's counsel were actively involved in their practice before OAH, and should have been able to participate in this matter as well, appear at the June 20, 2022 PHC and the June 24, 2022 Order to Show Cause hearing, and respond to OAH's repeated telephone and email communications.

OAH incurred costs totaling $2,573.75 preparing for the June 20, 2022 prehearing conference, creating an electronic evidence file for the parties to upload hearing exhibits, preparing for the June 24, 2022 order to show cause hearing, and preparing this order. This included a total of 7.75 hours of ALJ time, billed to the California Department of Education at a rate of $325.00 per hour, and a $55.00 electronic evidence fee incurred in setting up the electronic evidence file. The hearing ALJ billed 0.5 hours on June 16, 2022 reviewing the complaint, scheduling the videoconference for the PHC, and emailing the parties invitations with a link to the videoconference. The ALJ responsible for setting up the electronic evidence file

for hearing of the matter billed 0.5 hours on June 17, 2022, and the $55.00 electronic evidence fee was incurred the same date. The hearing ALJ on June 20, 2022 billed 1.25 hours in prehearing conference preparation, including one hour preparing a draft order following PHC, and fifteen minutes on the videoconference PHC itself, waiting to see whether the parties would appear at the PHC, which they did not. Following the PHC on June 20, 2022, the hearing ALJ billed 0.75 hours preparing an order to show cause why Student's case should not be dismissed for inactivity, and the presiding ALJ billed 0.25 hours reviewing the order before it issued. On June 23, 2022, the hearing ALJ billed 1.0 hour scheduling the videoconference for the order to show cause re dismissal for inactivity, emailing the parties invitations with a link to the videoconference researching, and researching and preparing a draft order dismissing Student's case for inactivity. On June 24, 2022, the hearing ALJ billed 1.0 hour preparing for the order to show cause hearing, including fifteen minutes on the videoconference order to show cause hearing itself, waiting to see whether the parties would appear, which they did not, and 15 minutes completing a draft order dismissing Student's case for inactivity. On June 27, 2022, the hearing ALJ spent 2.5 hours researching and preparing this order.

APPLICABLE LAW

In certain circumstances, an ALJ 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).)

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 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.)

ORDER TO SHOW CAUSE

Student and Hart are ordered to appear on July 22, 2022 at 1:00 PM for a Zoom videoconference hearing of an Order to Show Cause why the parties, and Student's attorneys Marc Levine and Jerid Maybaum, should not be required to pay OAH's expenses incurred preparing for the June 20, 2022 prehearing conference, creating an

electronic evidence file for the parties to upload hearing exhibits for the on-calendar hearing, preparing for the June 24, 2022 order to show cause hearing, and preparing this order. Failure of attorneys Levine and Maybaum, or representatives of Hart, to appear telephonically at the order to show cause hearing on July 22, 2022 may result in additional sanctions.

Student and Hart are ordered to each file a written response with OAH by no later than 5:00 p.m. on July 19, 2022. Each party will serve its response on the other party. Neither party is expected to file a written reply brief to the other side's response. The parties' responses shall address why they did not appear at the June 20, 2022 prehearing conference or June 24, 2022 order to show cause hearing, why Student did not dismiss the matter, if it should have been dismissed, and why they did not respond to OAH's email and telephonic communications from June 16, 2022 through June 24, 2022, detailed above. Each party's written response shall address why OAH should not order Student, Hart, and/or Student's attorneys to pay OAH's expenses incurred preparing for the June 20, 2022 prehearing conference, creating an electronic evidence file for the parties to upload hearing exhibits for the on-calendar hearing, preparing for the June 24, 2022 order to show cause hearing, and preparing this order..

IT IS SO ORDERED.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings