BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2024070763

VACATING THE AUGUST 16, 2024 ORDER TO SHOW CAUSE HEARING

AUGUST 15, 2024

On July 22, 2024, Parent on behalf of Student filed a request for due process hearing, complaint, naming Del Mar Union School District. On July 29, 2024, Parent on behalf of Student filed ex parte communications with the Office of Administrative Hearings, called OAH, in this matter that requested that OAH seal Student's records. Student's request did not contain a proof of service upon Del Mar Union School District, nor its legal counsel. Parent further emailed this document to seven OAH Administrative Law Judges, ALJs, including the undersigned, and a Department of General Services employee On July 31, 2024, OAH served Parent with Notice of Receipt of Ex Parte Communications, and provided Del Mar Union with a copy of Student's request.

On July 31, 2024, at 5:24 PM, Parent filed with OAH "SIXTH REQUEST TO SEAL FOR FRAUD AND VIOLATION OF PRIVACY RIGHTS OAH CASE NUMBER 2024070763." Further, Parent emailed 35 minutes later seven OAH ALJs and DGS employee the same motion. As with the July 29, 2024 Third Request to Seal, Parent did not serve Del Mar Union.

On August 2, 2024, OAH served Parent with Notice of Receipt of Ex Parte Communications; Order to Cease Emailing OAH, and provided Del Mar Union with a copy of Student's Sixth Request to Seal. The Order told Parent not to email OAH ALJs or DGS employees any motions or letters regarding Student. Student was to file these documents through the OAH Secure File Transfer system or by mail. Finally, Parent's failure to comply with this Order could result in OAH sanctioning Parent.

Parent failed to comply with the August 2, 2024 Order as on August 8, 2024, Parent emailed the same seven ALJs and DGS employee with Student's "Opposition to Del Mar Union School District's Motion to Dismiss." Parent did provide the attorneys for Del Mar Union with a copy of the document.

On August 8, 2024, OAH issued Order to Show Cause as to Why Parent Should be Ordered to Pay Expenses due to Parent's repeated Ex Parte communication with OAH and emailing various OAH ALLs and DGS employees filings in this case. Parent had until 5:00 PM on August 14, 2024, to file a response why Parent should not be required to pay OAH's costs as to the August 8, 2024 Opposition to Del Mar Union School District's Motion to Dismiss, and this Order to Show Cause, which Parent failed to do.

APPLICABLE LAW

In certain circumstances, an administrative law judge, known as the 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).)

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) & (e); 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).) Absent exceptional circumstances, a law firm is held jointly responsible for violations committed by its partners, associates, or employees. (Code Civ. Proc., § 128.5, subd. (f)(1)(C).)

"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

Parent has failed to comply with the August 2, 2024 Order as Parent emailed the seven OAH ALJs, along with a Department of General Services employee, on August 8, 2024. Parent then failed to comply with August 8, 2024 Order that required Parent to provide an explanation why OAH should not sanction Parent for failing to comply with OAH orders. Parent's conduct in emailing the OAH ALJs directly the same documents regarding OAH, OAH ALJs, Student, Del Mar Union, and the attorneys representing Del Mar Union constitutes bad faith and frivolous conduct without merit designed to harass OAH so OAH will grant Parent the requested relief against Del Mar Union. Parent has not provided a rational reason why Parent continues to repeatedly email the OAH ALJs basically the same information.

While Parent's conduct to August 8, 2024, constituted bad faith and frivolous conduct, Parent has not continued the conduct after the issuance of the Order to Show Cause. Parent has not emailed directly OAH ALJs about this case and has followed instructions to file documents through OAH's Secure File Transfer system. Therefore, OAH will not order Parent to shift costs to pay OAH expenses. However, Parent is put on notice that if Parent starts emailing OAH ALJs case related information regarding Student, Del Mar Union or its Attorneys, OAH will issue another Order to Show Cause.

ORDER

1. The Order to Show Cause hearing scheduled for 11:00 AM. on Friday, August 16, 2024, is vacated.
2. Parent shall continue to comply with the August 2, 2024 Order to Cease Emailing OAH in this case and not email directly OAH ALJs or DGS employees any motions or letters regarding Student.

Peter Paul Castillo

Peter Paul Castillo
Division Chief Administrative Law Judge
Office of Administrative Hearings