BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020120240

ORDER DENYING MOTION TO SHIFT EXPENSES

JULY 19, 2021

On December 7, 2021, Student filed a request for due process, called a complaint, naming Oakland Unified School District, called Oakland. The matter has been continued multiple times, and is currently set for hearing on August 3, 4, and 5, 2021. On July 14, 2021, the undersigned Administrative Law Judge, called ALJ, held a prehearing conference prior the due process hearing previously scheduled for June 22, 23, and 24, 2021. At the prehearing conference, the undersigned ALJ confirmed with both parties that evidence must be exchanged by 5:00 pm on June 15, 2021.

On June 17, 2021, Oakland filed a motion to exclude Student's evidence or, in the alternative, to compel Student to produce evidence. On June 18, 2021, Oakland filed an amended motion to exclude Student's evidence, a motion for sanctions and a request that OAH to issue an order to show cause as to why the cost of Oakland's litigation

should not be shifted to Student, due to Student's alleged bad faith delays in proceeding to due process and incompetence of Student's Counsel. Oakland's requests were supported by the sworn declaration of Oakland's Counsel detailing a history of delays in the resolution of this matter, all related to Student's Counsel's medical condition, which long-preceded Student's filing for hearing.

On June 21, 2021, Student filed a response and a request for continuance. Student's response asserted that Student was unable to provide Oakland with Student's evidence due to Student's Counsel's medical condition. Student's request for continuance was based on Student's counsel's alleged inability to work, related to Student's worsening medical condition

On June 21, 2021, Oakland filed a reply in support of its motion to exclude evidence and for sanctions.

On June 21, 2021, Student filed a request for continuance supported by a note from Student's counsel's physician placing Student's Counsel on medical leave through July 15, 2021, due to a recent flare-up of Counsel's pre-existing medical condition.

On June 21, 2021, the undersigned ALJ issued an order granting Student's request for continuance, denying Oakland's motion to exclude evidence as moot, and ordering Student to show cause regarding shifting costs. The continuance was granted for good cause based on Student's need for more time to proceed to hearing with competent representation due to Student's Counsel's then current inability to competently represent Student in this matter. Student was placed on notice that no further continuances will be granted based on Student's Counsel's known and ongoing medical condition. Student was ordered to file with OAH, by noon on July 16, 2021, a statement as to why the costs of litigation related to Student's failure to timely

exchange evidence five days before the hearing previously set to begin on June 22, 2021. Oakland was ordered to file any response to Student's filing no later than noon on July 19, 2021.

On July 19, 2021, Student filed a response to the order to show cause as to the shifting of costs. Student's response asserted that Counsel's medical condition prevented the timely exchange of Student's evidence. Student asserted that costs should not be shifted because Oakland did not have "clean hands", based on a series of actions by Oakland which Student asserts demonstrate Oakland's exploitation and exacerbation of Student's Counsel's medical condition.

On July 19, 2021, Oakland filed a reply in support of its request for sanctions. On July 19, 2021, Student filed a reply.

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) & €; 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.)

DISCUSSION

Here, Oakland failed to meet its burden to establish that Student demonstrated bad faith actions that were frivolous, solely intended to cause unnecessary delay, or that they were meritless. Student's Counsel's actions which resulted in a delay of this matter, for which Oakland seeks sanctions, were based on Counsel's medical condition and related inability to competently represent Student. Accordingly, Oakland's request for

sanctions is denied for failure to establish that Counsel acted with bad faith or engaged in frivolous conduct intended solely to cause unnecessary delay. Moreover, Oakland sought sanctions for all litigation-related costs. Even had Counsel's conduct been frivolous if failing to exchange evidence, that would not have warranted shifting all litigation-related expenses.

Student's Counsel is reminded, however, that Counsel's continued health condition shall not be the basis of any further delays in the resolution of this matter.

ORDER

Oakland's motion for sanctions is denied.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings