

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011080031

v.

VICTOR VALLEY UNION HIGH SCHOOL  
DISTRICT,

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VICTOR VALLEY UNION HIGH SCHOOL  
DISTRICT,

OAH CASE NO. 2011080382

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION FOR  
SANCTIONS AND GRANTING  
MOTION TO CORRECT DECISION

On March 12, 2012, the undersigned administrative law judge issued a Decision in the above-referenced consolidated due process matters. On March 15, 2012, District filed a Motion to Correct the Decision, stating that the final Order cannot be implemented because it calls for a seven-period school day in Student's home high school. According to District's Motion, Student's home high school is Victor Valley High School, which follows a six-period daily schedule.

On March 20, 2012, Student filed a Motion for Sanctions, in which Student argued that District's Motion was in bad faith. Student cited to OAH's order dated August 16, 2011, which found that Student's stay-put placement during the pendency of this matter should consist of a seven-period school day to be implemented in Student's home high school, and which was in that respect similar to the ultimate Decision. Student also cited to two documents District had filed in connection with stay-put, one dated August 26, 2011, and the other dated December 16, 2011. In the August 26, 2011, filing, District stated: "District can sufficiently provide Student with the services required by the [OAH August 16, 2011] Order at Victor Valley High School." In its December 16, 2011, filing, however, District clarified that Victor Valley High School did in fact follow only a six-period daily schedule.

As discussed below, the motion to correct is granted and the motion for sanctions is denied. A Corrected Decision will be issued shortly after this order.

## APPLICABLE LAW

To the extent, District seeks a correction of the Order in the decision, OAH decisions rendered in special education due process proceedings are final upon issuance, and any party aggrieved by the findings and decision may seek review by bringing a civil action in state or federal district court, within 90 days from the date of the ALJ's decision. (20 U.S.C. § 1415(i); 34 C.F.R. §§ 300.514 and 300.516 (2006); Gov. Code § 56505, subd. (k).) No federal or state special education statutes or regulations provide for reconsideration of a decision issued following a due process hearing.

As to sanctions, under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (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.”].)

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 successor to the California Special Education Hearing Office) 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 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).) “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

District’s Motion seeks correction of the final Order. In light of District’s filing dated December 16, 2011, in connection with stay-put, the complete record of these proceedings

including motion practice revealed that Student's home high school, Victor Valley High School, followed only a six-period daily schedule. Therefore, the ALJ erred in the original Order in the decision by specifying a seven period schedule. At all times, the intent of the ALJ's Order was for Student to attend school at his home high school, regardless of the number of periods in the school day. The Order and decision will be amended in a way that reflects the six period schedule in the ordered placement. As to sanctions, in light of the foregoing, District's Motion is not a request for reconsideration of the decision, nor is it a "bad faith action or tactic" that is frivolous or solely intended to cause unnecessary delay. Instead, District's Motion was appropriate because it sought to ensure that the ALJ's Order could be implemented in the ordered placement. Therefore Student's motion for sanctions is denied.

### ORDER

1. District's Motion to Correct the Decision is granted. A Corrected Decision will issue shortly after this order.
2. Student's Motion for Sanctions is denied.

Dated: March 21, 2012

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings