

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 STUDENT'S  
MOTION FOR SANCTIONS

On July 28, 2011, Student filed a due process hearing request (complaint) naming the Victor Valley Union High School District (District), the Desert Mountain Special Education Local Plan Area (SELPA), the San Bernardino County Superintendent of Schools (Superintendent)<sup>1</sup>, and the San Bernardino County Education Support Services Division<sup>2</sup>, as respondents. On August 1, 2011, Student filed a motion for stay put, requesting that Student, who completed the eighth grade at Lakeview Middle School (Lakeview) in June 2011, remain at Lakeview during the pendency of this matter. On August 4, 2011, District filed an opposition contending that the Individuals with Disabilities Education Act (IDEA) contemplated that stay put would include matriculation to Student's next grade level during the pendency of a due process matter, and thus, Student needed to matriculate to his home school, Victor Valley High School (Valley). On August 7, 2011, Student filed a reply to District's opposition stating that matriculation to high school would be detrimental to Student, and would be "damaging to [his] career and reputation." On August 16, 2011, OAH issued an order denying Student's motion for stay put, and explained that Student must progress to the next grade in order to maintain the status quo for purposes of stay put, and receive the services set forth in his last agreed upon and implement IEP of June 8, 2010.

On October 21, 2011, Student filed a motion for sanctions contending that District failed to comply with the stay put order, attempted to "blackmail" Student's mother (Mother), lied to OAH in its opposition to Student's motion for stay put, failed to advise OAH that Mother had signed a June 2, 2011 IEP on June 29, 2011, and that District

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<sup>1</sup> On December 2, 2011, the Office of Administrative Hearings (OAH) dismissed the San Bernardino County Superintendent of Schools as a party in this matter.

<sup>2</sup> On October 26, 2011, OAH dismissed the San Bernardino County Education Services Division as a party in this matter.

committed malice, bad faith, obstruction, and interference by concealing evidence and failing to disclose the truth about Student's educational programs as outlined in his IEPs.

On November 15, 2011, at the due process hearing in this matter before Administrative Law Judge (ALJ) June L. Lehrman, District advised that it had not been served with Student's motion for sanctions. ALJ Lehrman then ordered District to file a response to Student's motion no later than December 16, 2011. District filed its response on December 16, 2011, which included sworn declarations and exhibits. On December 20, 2011, OAH denied Student's request for sanctions as Student failed to establish that District engaged in bad faith actions or actions solely intended to cause unnecessary delay tactics.

On February 12, 2012, Student filed another request for sanctions against District alleging essentially the same thing he alleged in his October 21, 2011 request for sanctions. Specifically, Student alleged that District "obstructed Student's case, and stay put rule, by not revealing relevant factual background and procedural information" to OAH in its responsive pleadings to Student's motion for stay put. District filed no opposition.

#### APPLICABLE LAW

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

Student had the burden of proof on his motion for stay put. As such, it was Student's sole responsibility for submitting the relevant IEP's and evidence with his motion for stay put, which Student failed to do. District had no duty to carry Student's burden in that regard, and, as such, any alleged failure of District to attach to its responsive pleading IEP's that Student considered operable, including the June 2, 2011 IEP, does not establish bad faith on the part of District.

Furthermore, the evidence showed that the parties vehemently contested the facts surrounding whether the June 2, 2011 IEP was operative, particularly the issue of whether and when Student's mother provided consent to the IEP. Consequently, as set forth in OAH's December 19, 2011 order denying Student's request for reconsideration of the order denying his motion for stay put, such factual disputes were required to be resolved within the context of a due process hearing, and not in a stay put motion. Given these factors, Student did not establish that in responding to Student's motion for stay put, the District engaged in bad faith actions or actions solely intended to cause unnecessary delay. Accordingly, the ALJ declines to exercise her discretion to impose sanctions. Student's motion for sanctions is denied.

IT IS SO ORDERED.

Dated: February 27, 2012

/s/

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CARLA L GARRETT  
Administrative Law Judge  
Office of Administrative Hearings