

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EAST WHITTIER CITY SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2010020014

ORDER DENYING STUDENT'S
MOTION FOR SUMMARY
JUDGMENT, AND DISTRICT'S
MOTION FOR SANCTIONS

On March 15, 2010, Student filed a motion for summary judgment based on District's "failure to provided educational records" prior to the Due Process Hearing. On March 16, 2010, District filed its opposition to Student's motion on the ground that there is no summary judgment procedure that applies to special education due process hearings. District requested that the Office of Administrative Hearings (OAH) impose sanctions on the Student for engaging "in bad faith tactics". No reply to District's motion has been received from Student. As discussed below, both Student's motion for summary judgment and District's motion for sanctions are denied.

APPLICABLE LAW

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), however, special education law does not provide for a summary judgment procedure.

Further, a presiding administrative law judge (ALJ) in a special education proceeding is authorized to initiate contempt sanctions or to shift expenses from one party to another in certain circumstances. (5 C.F.R. § 3088; Gov. Code, § 11455.30 [hereafter Section 11455.30]; Cal. Code Regs., tit. 1, § 1040.) The ALJ may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorneys' fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (5 C.F.R. § 3088; Gov. Code, § 11455.30; Cal. Code Regs., tit. 1, § 1040.)

California cases applying Code of Civil Procedure section 128.5, which is referenced in Government Code section 11455.30, hold that a trial judge awarding fees must state specific circumstances giving rise to the award of attorney's fees, and articulate with particularity the basis for finding the sanctioned party's conduct reflected tactics or actions

performed in bad faith and that were frivolous or designed to harass or designed to cause unnecessary delay. (*Childs v. Painewebber Incorporated* (1994) 29 Cal.App.4th 982, 996; *County of Imperial v. Farmer* (1998) 205 Cal.App.3d 479, 486. The purpose of the statute is not only to compensate, but it is also a means of controlling burdensome and unnecessary legal tactics. (*On v. Cow Hollow Properties* (1990) 222 Cal.App.3d 1568, 1577.) ‘Bad faith’ must be shown; it is not sufficient that a party or party’s representative engage in actions or tactics which are without merit, frivolous, or solely intended to cause unnecessary delay. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.) However, the bad faith requirement does not impose a determination of evil motive; subjective ‘bad faith’ may be inferred. (*Id.* at p. 702.)

DISCUSSION

Student argues that District has failed to comply with Student’s request for a complete copy of his school records. Although District provided some records, Student believes that test manuals, not provided by District are also school records and should have been provided. District opposed Student’s motion, arguing that; (1) OAH lacks legal authority to enter summary judgments, and that it is common knowledge that OAH does not grant motions to dismiss allegations that are within OAH jurisdiction, and, (2) test manuals are not part of the Student’s “educational records”, which Student is entitled to under both federal and state laws. Therefore, District argues, Student’s motion is completely without merits and thus sanctions should be impose on Student, and in favor of District, as the intent of Student’s motion appears to be to delay or deny District’s right to be heard.

Student’s motion for summary judgment is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on disputed matters of fact and on an issue that is not within the contours of the due process complaint.. Student fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings under federal law, or demurrer from facts on the face of the complaint under Code of Civil Procedure section 430.30, prior to giving a petitioner the opportunity to develop a factual record at hearing for issues properly within the contours of the due process complaint. Therefore, Student’s motion fails as a motion for summary judgment because the assertion involves disputed matters of fact but, more importantly, the issue concerning records is not contained in the complaint or parties’ prehearing conference statements, and is thus outside of the issues relevant to this hearing.

Regarding District’s motion for sanctions, even though District is correct that special education law does not provide for a summary judgment procedure, and that Student’s motion may, in fact, be without merit, District provided no evidence that Student’s motion was motivated by any intent to delay the scheduled due process hearing or otherwise filed in “bad faith”. ‘Bad faith’ must be shown; it is not sufficient that a party or party’s representative engage in actions or tactics which are without merit, frivolous, or solely intended to cause unnecessary delay. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.) Further, in its response to Student’s motion, and in its request for

sanctions, District seems to concede the fact that Student's motion might have been filed based on a misunderstanding or misapplication of the law, rather than with intent to cause a delay. Accordingly, District's motion for sanctions is denied.

ORDER

1. Student's motion for summary judgment is denied
2. District's motion for sanctions is denied.
3. All dates currently set in this matter are confirmed.

Dated: March 16, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings