

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010070415

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS; ORDER
DENYING MOTION FOR SANCTIONS

On July 07, 2010, Parent on behalf of Student filed a Request for Due Process Hearing (complaint), naming the San Diego Unified School District (District). On July 21, 2010, the District filed a motion to dismiss the complaint due to deficiencies in the pleading, lack of standing of Student's father (Father) to bring the complaint on Student's behalf, and based upon the theory of estoppel since Student had settled a prior case concerning the same issues in which he had agreed to waive all claims through the date of the agreement. The District also moves for sanctions against Student and Father based upon the fact that they raise in the instant complaint issues that they have raised in three prior complaints, one of which was settled and the other two of which were dismissed due to insufficiency of the pleading or based on the settlement agreement. To date, Student has not filed an opposition or otherwise responded to the District's motions.

MOTION TO DISMISS

Background Information

Over the last year and a half, Father, on behalf of Student, has filed five complaints. The first, filed on January 15, 2009, and designated OAH Case No. 2009010435, alleged that Student's individualized education program (IEP) had not been implemented and, as a result, Student should be permitted to repeat 11th grade as had been discussed at his IEP meeting. The complaint also contended that Father had to wait two and a half months to receive a copy of Student's IEP, and that the copy he received was different than what had been agreed to at the IEP meeting. The District filed a motion to dismiss the complaint because it had not been served with a copy of it. The Office of Administrative Hearings (OAH) directed Student to serve the complaint on the District. When Student did not file a proof of service as directed, OAH dismissed the complaint.

Student, through his Father, filed a second complaint on March 9, 2009, which was designated OAH Case No. 2009030679. This complaint alleged that Student did not receive services listed on his IEP and, as a result, had failed classes. It also alleged that proposals

discussed at Student's IEP meeting held September 11, 2008, were not included on the final IEP document, and that it took the District two and a half months to send the IEP to Father. The complaint requested that Student be permitted to repeat 11th grade. On March 27, 2009, Father, on behalf of Student, entered into a resolution settlement agreement with the District resolving all financial and educational claims under the jurisdiction of OAH through the date of the settlement agreement.

Student reached the age of 18 on May 2, 2009.

On September 14, 2009, Father on behalf of Student filed another due process complaint in OAH Case No. 2009090476. The complaint alleged that Student had requested the District to allow him to repeat 11th grade at the beginning of the 2008 – 2009 school year. The complaint also alleged that the District had not enforced a behavioral plan throughout the school year, that his teacher did not provide weekly progress reports, and that the District took months to resolve Student's complaints. Although Student was over 18 years old when the complaint was filed, the complaint did not provide proof or otherwise allege that Student had assigned his educational rights to Father. On September 21, 2009, OAH found the complaint deficient as to all claims. Student was given leave to amend the complaint; however, OAH also ordered Student to provide proof of the assignment of his educational rights to Father.

Student did not amend the complaint or provide the proof of the assignment of his educational rights as ordered, and OAH therefore dismissed the complaint. Rather, Father on behalf of Student filed another complaint on November 10, 2009, which was designated OAH Case No. 2009110459. The complaint alleged that Student was denied participation in the District's school choice program [for school year 2008 – 2009] and that the District should have honored Father's request in the 2008 – 2009 school year that Student repeat 11th grade. Father did not serve the complaint on the District; it was served by OAH. The complaint did not provide proof or otherwise allege that Student had assigned his educational rights to Father. The complaint did not allege that Student was denied a free appropriate public education because the District did not comply with the terms of the settlement agreement dated March 29, 2009. Rather, the complaint alleged issues raised and resolved in OAH Case No. 2009030679. On December 22, 2009, OAH dismissed the complaint in OAH Case No. 2009110459 based upon the fact that the issues had been resolved by the settlement agreement in OAH Case No. 2009030679.

Father on behalf of Student filed the instant case on July 7, 2010.

Discussion – Motion to Dismiss

OAH has limited jurisdiction for special education matters. OAH may only hear due process claims arising under the Individuals with Disabilities Education Act (IDEA), specifically, "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a); see *Wyner v. Manhattan Beach Unified*

Sch. Dist. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH has granted motions to dismiss allegations that are facially outside of its jurisdiction, such as claims that are unrelated to special education or claims that are barred by prior settlement agreements.

The instant complaint raises only two issues: 1) that Father requested that Student repeat 11th grade at the IEP meeting held September 11, 2008, to which everyone agreed, but that the items agreed to at the meeting were not implemented; and 2) that Father did not get a copy of the IEP, which he requested on October 15 [2008], until December 2008, and that there were changes on the IEP to which he had not already agreed. There is no contention or any proof in the complaint that Student has assigned his educational rights to Father. The issues Student raises in the instant case are the same which he, through Father, has raised in some form in each of the previous complaints referenced above. Like the complaint in OAH Case No. 2009110459, nothing in the complaint can be interpreted as an allegation that Student was denied a free appropriate public education because the parties did not comply with the resolution agreement. As demonstrated by the evidence supporting the District's motion and a review of the file in OAH case number 2009030679, both of these issues were specifically alleged by Student in OAH case number 2009030679. The resolution agreement in OAH case number 2009030679 was executed on March 27, 2009 and states: "This agreement settles any and all financial and educational claims under the jurisdiction of the Office of Administrative Hearings (OAH) and the California Department of Education, including compensatory education, against the District on behalf of [Student] through the date of this fully executed agreement." Thus, on its face, the complaint in the instant case, like the complaint in Case No. 2009110459, is barred by the resolution agreement

Additionally, Education Code section 56041.5, provides that the rights of an individual with exceptional needs transfer to him or her when he or she reaches age 18. The instant complaint, like its predecessors filed subsequent to May 2, 2009, fails to provide proof or even assert that Student has assigned his educational rights to Father. Father therefore does not presently have standing to bring this complaint on behalf of Student.

The District's motion to dismiss is therefore granted with prejudice.

Motion for Sanctions

The District also moves for monetary sanctions, in the form of payment of its expenses and attorney's fees, based upon its contention that Father on behalf of Student has engaged in bad faith actions and tactics by filing frivolous complaints. As stated above, Father has filed three complaints subsequent to entering into a settlement agreement with the District in OAH Case No. 2009030679, each of which raise the same issues asserted in the earlier complaint.

Government Code section 11455.30 provides:

(a) The presiding officer may 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 as defined in Section 128.5 of the Code of Civil Procedure.

(b) The order, or denial of an order, is subject to judicial review in the same manner as a decision in the proceeding. The order is enforceable in the same manner as a money judgment or by the contempt sanction.

California Code of Regulations, title 1, section 1040, provides:

(a) The ALJ may order a party, a party's 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.

(1) 'Actions or tactics' include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order of the ALJ.

(2) 'Frivolous' means

(A) totally and completely without merit or

(B) for the sole purpose of harassing an opposing party.

(b) The ALJ shall not impose sanctions without providing notice and an opportunity to be heard.

(c) The ALJ shall determine the reasonable expenses based upon testimony under oath or a Declaration setting forth specific expenses incurred as a result of the bad faith conduct. An order for sanctions may be made on the record or in writing, setting forth the factual findings on which the sanctions are based.

In the instant case, the conduct alleged by the District to be frivolous and in bad faith is the repeated filing by Father on behalf of Student of complaints which allege issues raised in three previous complaints. Additionally, the District brings the motion for sanctions based upon the fact that Student's complaint again fails to allege or contain proof that Student has assigned his educational rights to Father. Generally, the facts as alleged and demonstrated by the District's motion would be sufficient basis for OAH to issue an order to show cause as to why the sanctions requested should not be imposed. However, Father on behalf of Student brings this case, and has brought all previous cases, in propria persona without benefit of counsel. There is no indication that Father is an attorney. The issue of sanctions has not been previously raised and Father has therefore not yet been informed about the statutes which would support the award of sanctions.

For these reasons, the Administrative Law Judge declines at this time to issue an order to show cause as to why sanctions should not be imposed. However, Student and Father are both strongly cautioned that should either file another complaint raising the issues

settled in OAH Case No. 2009030679, OAH may issue an Order to Show Cause re: Sanctions upon proper motion by the District.

ORDER

1. The District's motion to dismiss is granted. OAH Case No. 2010070415 is dismissed with prejudice.
2. The District's motion for sanctions is denied without prejudice.
3. All dates previously set in this matter are vacated.

Dated: July 30, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings