BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>MANTECA UNIFIED SCHOOL DISTRICT, SAN JOAQUIN COUNTY OFFICE OF EDUCATION, AND SAN JOAQUIN SELPA. | OAH CASE NOS. 2011060184 (Primary Case) and 2011050574 |
| MANTECA UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2011050289<br><br>ORDER DENYING STUDENT'S MOTION FOR SANCTIONS, COSTS AND REIMBURSEMENT |

On July 6, 2011,[1] Student filed a Motion for Sanctions, Costs and Reimbursement of Office of Administrative Hearings (OAH) Personnel Costs (Motion for Sanctions). On July 8, 2011, Respondents San Joaquin County Office of Education (SJCOE) and San Joaquin County Special Education Local Plan Area (SELPA), (collectively, "Respondents"), filed their Opposition. On July 13, 2011, Student filed a Reply to Respondent's Opposition. Student did not file this Motion against Manteca Unified School District (District).

Student contends that sanctions are justified for reasons related to Respondents filing of a Notice of Insufficiency (NOI), and receiving a ruling on Respondents' Motion to Dismiss (styled as an Opposition to Student's Request to Add Parties). As part of their Opposition and NOI, Respondents claimed that Student was not a pupil residing within their jurisdiction during the relevant time period. Student describes Respondents' choice to file an NOI as duplicative of their Motion to Dismiss, which OAH denied, and contrary to OAH's directive to proceed to hearing without "further delay."

Student contends that sanctions are also justified because Respondents did not hold a resolution session.

[1] The document was dated July 5, 2011, but was sent via facsimile at 22:44 hours, or 10:45 p.m., after close of business on July 5, 2011.

For the reasons set forth below, Student's Motion for Sanctions is denied.

## APPLICABLE LAW

*Request for Monetary 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."].) 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 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 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).) "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.)

The California Court of Appeal discussed what is required to impose sanctions under California Code of Civil Procedure section 128.5 in the case of *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635. In discussing what constitutes bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, the court stated the action taken by the party or its attorney must be solely for the purpose of harassing an opposing party. Whether an action is frivolous is governed by an objective standard: any reasonable attorney

would agree it is totally and completely without merit. There must also be a showing of an improper purpose, such as subjective bad faith on the part of the attorney or party to be sanctioned. (*Levy v. Blum*, *supra*, 92 Cal.App.4th at p. 635.) This subjective bad faith requirement does not impose a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

*NOI Process*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

*Resolution Sessions*

The Individuals with Disabilities Education Improvement Act (IDEA) and state law regulating special education administrative proceedings require that, when parents file a due process complaint, within 15 days of receiving notice of such complaint, the local education agency must convene a resolution session. (20 U.S.C. § 1415(f)(1)(B)(i)(I);[2] 34 C.F.R. § 300.510(a) (2006); Ed. Code, § 56501.5, subd. (a)(1).) The purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint, and permit the local education agency to resolve the matter. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2) (2006); Ed. Code, § 56501.5, subd. (a)(4).) The local education agency has 30 days from receipt of the complaint to reach a resolution. (§ 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b)(1) (2006); Ed. Code, § 56501.5, subd. (c).) The resolution session need not held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3) (2006).) If the local education agency fails to hold the resolution session within 15 days from its receipt of the complaint, the parent may request that the hearing office begin the 45-day hearing timeline. (34 C.F.R. § 300.510(b)(5) (2006).)

## ANALYSIS

Student's Motion for Sanctions based upon Respondent's unnecessary delay is not supported by the extensive procedural history of this matter, or the OAH's rulings on Respondents' Motion to Dismiss and NOI.

[2] All references are to Title 20 United States Code unless otherwise note.

The procedural history is extensive and protracted due to Student's multiple and overlapping filings. The Manteca Unified School District (District) filed a request for due process hearing in case number 2011050289 (District's complaint) on May 4, 2011, which raised the single issue of whether the District may assess Student in the area of social/emotional in accordance with a December 2010 assessment plan. On May 12, 2011, Student filed a request for mediation and due process hearing in case number 2011050574 (Student's first complaint), which also related to the issue of assessments in the December 2010 assessment plan. OAH consolidated the two cases on May 17, 2011 resulting in the first consolidated matter. On May 24, 2011, Student filed a second request for mediation and due process hearing in case number 2011060184 (Student's second complaint). Student's second case also involved issues relating to the December 2010 assessments. On May 30, 2011, Student fled a motion to amend, add parties and withdraw claims. On June 4, 2011, Student filed a further motion to amend. On June 8, 2011, OAH denied Student's May 30 and June 4, 2011 motions without prejudice.

On June 15, 2011, Student filed three motions under OAH case number 2011060184: 1) motion to add additional parties to Student's complaint in the first consolidated matter; 2) motion to amend Student's complaint in the first consolidated matter; and 3) motion to consolidate the first consolidated matter with Student's complaint identified as OAH case number 2011060184. Student included a proposed amended and consolidated complaint.

Respondents filed an opposition to Student's request to add a party on June 17, 2011, under the caption of the first consolidated action. Also on June 17, 2011, Respondents, as proposed new parties filed, under OAH case number 2011060184, an opposition to their addition as parties. Respondents argued in opposition that they should not be added to the case because they did not provide services to Student during the time frame involved in the first consolidated matter.

On June 20, 2011, OAH granted Student's motion to add SJCOE and the SELPA as parties to these consolidated cases. OAH granted Student's motion to add Respondents as parties, and denied Respondents' opposition. OAH reasoned that Respondents' arguments addressed the merits of Student's complaint against them, and required findings of fact by the ALJ at the hearing. OAH did not rule that Respondents' arguments were not meritorious, but rather that their arguments were not relevant to a determination of whether Student's pleading was permissible. As part of its Order, OAH analyzed Student's multiple filings and assigned case numbers. OAH stated that:

> "Although Student's June 14, 2011 motions and some of the responsive pleadings do not correctly reflect the appropriate case numbers, in order to avoid further delay and confusion, this Order addresses all three of Student's motions under their respective case numbers and shall be binding in all three matters."

OAH's Order dated June 20, 2011, did not state that Respondents were engaging in conduct that caused unnecessarily delay.

On June 23, 2011, Student filed a motion for clarification of OAH's June 20, 2011 order. OAH granted Student's motion on June 27, 2011, clarifying that Student's motion to amend and add parties pertained to Student's second complaint in case number 2011060184. Student's proposed complaint was deemed to add SJCOE and SELPA to Student's second complaint, as of June 20, 2011, the date OAH issued its Order.

On June 28, 2011, Respondents jointly filed an NOI as to Student's amended complaint. Student filed an opposition on July 1, 2011. Respondents contended that Student's amended complaint is insufficient because it fails to specify the timeframe during which they allegedly violated Student's rights. Respondents' argued that Student intentionally omitted the time frame to avoid setting forth facts which would clearly establish that Student was not within their jurisdiction during the relevant time period. OAH denied Respondent's NOI and ruled that the facts alleged in Student's complaint are sufficient to put Respondents on notice of the issues forming the basis of the complaint.

After Respondents were added to Student's complaint, Respondents did not convene a resolution session.

Student has failed to provide an appropriate basis for monetary sanctions arising from the procedural history of this matter. Respondents' effort to be dismissed as parties does not constitute bad faith or frivolous litigation tactics. Respondents' Motion to Dismiss was denied not because their claims were frivolous, but because a determination of whether Respondents were improper parties required an evidentiary hearing. Contrary to Student's claim, OAH did not determine that Respondents' actions caused unnecessary delay. Pursuant to the IDEA, Respondents have an absolute right to file a NOI. Respondents' argument that Student's complaint was vague due to his failure to provide a timeframe was rejected, but it was not deemed frivolous.

Respondents argue that they unsuccessfully tried to contact Parent after the complaint was amended adding them as parties. Respondents do not contend that they offered a resolution session to Student. Rather, they assert that they were excused from offering a resolution session because they were brought in by motion after the District had already had an opportunity to hold a resolution session, and that Parent failed to cooperate in their attempts to communicate about a resolution to the matter. The IDEA does not excuse any local educational agency from holding a resolution session on the ground that another local educational agency was served first. There is no evidence that Respondents and Student agreed to substitute mediation for a resolution session. There is a factual dispute as to whether Parent failed to cooperate in scheduling a resolution session, or waived the resolution session.

Regardless of whether Respondents' or Parent's interpretation of events is accurate, Student's position that the Respondent's failure to offer a resolution session warrants the impositions of any of the sanctions he requests is equally untenable. Student offers no

statutory or legal authority in support of his request for monetary sanctions based on Respondents' failure to hold a resolution session. Rather, the applicable statutory scheme, as detailed above, provides a specific remedy for this situation: if a local educational agency does not offer a resolution session, a pupil may request that the hearing office immediately begin the 45-day hearing timeline. Student has not made such a request in this case and has therefore chosen not to avail himself of the only available statutory remedy for the Respondents' alleged failure to offer him a resolution session.

## ORDER

Student's Motion for Sanctions, Costs and Reimbursement of OAH Personnel Costs is denied.

Dated: July 21, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings