

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RIALTO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012050064

ORDER DENYING MOTION FOR
SANCTIONS

On April 24, 2012, the Rialto Unified School District (District), through counsel, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (District Complaint) that named Student. OAH assigned the District Complaint case number 2012050064. On May 15, 2012, Student, through his advocate, filed with OAH a Request for Due Process Hearing (Student Complaint) that named the District. OAH assigned the Student Complaint case number 2012050635. On May 22, 2012, OAH ordered the consolidation of the District and Student Complaints.

On July 13, 2012, District filed a motion to dismiss Student's Complaint due to Parents' non-participation in a mandatory resolution session. Student timely filed an opposition and District filed a reply. On July 24, 2012, OAH issued an order denying the motion to dismiss, directing the parties to participate in a resolution session, and re-set the consolidated matters for a prehearing conference (PHC) on August 6, 2012, and for due process hearing on August 13 through August 17, 2012.

On August 6, 2012, OAH re-convened a PHC for the consolidated matters. District, through counsel and a program manager for the East Valley Special Education Local Plan Area, appeared at the PHC. Student, through his father and advocate, also appeared at the PHC.

On August 8, 2012, Student's advocate filed with OAH a withdrawal of the Student Complaint. District's Complaint and related due process hearing remained set for August 13 through 17, 2012.

On August 10, 2012, recently retained counsel for Student filed with OAH an Emergency Request for Continuance, supported by declarations of counsel and Student's father. The request sought a short continuance of the pending due process hearing. OAH granted the request and set the PHC to reconvene on September 10, 2012, and re-set the due process hearing for September 17 through 20, 2012.

On August 14, 2012, District filed a request for sanctions against Student, alleging that Student's parents and advocate had intentionally refused to follow procedural requirements, refused to follow OAH orders, and unnecessarily delayed the due process hearing. Student timely opposed the District's motion for sanctions and the District replied to Student's opposition.

APPLICABLE LAW

In certain circumstances, an ALJ 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).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "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

Here, District's motion fails because only the ALJ who is presiding over the matter may place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) The ALJ in this matter declines to do so as such sanctions are not necessary to ensure an orderly and fair hearing.

In its motion, District primarily alleges four grounds for sanctions, all which fail to show actions or tactics which rise to the level of conduct which merits an order for sanctions.

First, District alleges that Student improperly refused to participate in a mandatory resolution session. However, OAH's order of July 24, 2012, addressed this exact issue. OAH denied the District's motion to dismiss based upon Student's non-participation in the resolution process and ordered the parties to participate in a resolution session. Student timely complied with this order and participated in a resolution session on August 2, 2012. As such, the alleged conduct does not warrant sanctions.

Second, District alleges that Student's refusal to cooperate in the mediation process is conduct which warrants sanctions. District fails to cite any legal authority for this theory. Here, while Student failed to properly confirm his participation in the mediation session, it was the District which canceled the mediation. Moreover, it is not required that parties participate in mediation. Thus, the alleged conduct does not warrant sanctions.

Third, District contends that Student's failure to follow OAH orders subjects him to sanctions. Although a party's failure to follow OAH orders may warrant sanctions, the present conduct does not substantiate monetary sanctions, as requested by the District. Specifically, Student's conduct of (1) not filing a PHC statement, and (2) not following the orders set forth in OAH's order following the PHC of August 6, 2012, are moot because the due process hearing has been re-set. Moreover, had the hearing not been re-set, the proper sanction for Student's failure to file a PHC statement, in accordance with Education Code section 56505, or to follow OAH's August 6, 2012 order to meet and confer regarding the scheduling of witnesses, would have been to limit or exclude Student's exhibits and witnesses. Thus, Student's conduct does not merit monetary sanctions.

Finally, District complains that Student's emergency request for continuance has harmed the District in that it incurred time and expenses in preparing for a hearing which was subsequently rescheduled. However, in its August 10, 2012 order, OAH found that good cause existed for Student's continuance. As such, Student's conduct in requesting the continuance cannot be deemed frivolous or meritless conduct, or conduct designed to cause unnecessary delay of the hearing, as required for an award of sanctions. Therefore, the complained conduct is not sanctionable.

ORDER

District's motion for sanctions is denied.

Dated: August 20, 2012

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings