

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2014040519

ORDER DENYING DISTRICT'S
REQUEST FOR MONETARY
SANCTIONS

On September 9, 2014, in its closing brief, District requested as the prevailing party an award of monetary sanctions against Student for filing and litigating a frivolous complaint for the sole purpose of harassing District with needless litigation costs. District also requested monetary sanctions for the late arrival of Student's counsel at the hearing in violation of the prehearing conference order.

APPLICABLE LAW

A court may, in its discretion, award reasonable attorneys' fees to a school district that is a "prevailing party" in any action or proceeding brought under 20 U.S.C. § 1415 either:

... against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

... against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the costs of litigation.

(20 U.S.C. §§ 1415(i)(3)(B)(i)(II)-(III); 34 C.F.R. § 300.517(a).) The purpose of a fee award under these sections is to deter frivolous cases and unreasonably demanding or litigious parents and their attorneys. (*C.W. v. Capistrano Unified School District* (C.D. Cal. 2012) 2012 WL 6093765, *2.)

California Code of Regulations, Title 5, section 3088, subdivision (b), authorizes the presiding hearing officer to issue contempt sanctions and/or place expenses in issue. Government Code section 11455.30 authorizes monetary sanctions in administrative

proceedings for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

LEGAL ANALYSIS

District's request for monetary sanctions as the prevailing party in this proceeding is procedurally defective. First, it was embedded in District's closing argument, depriving Student of both proper notice of a motion and an opportunity to oppose such a motion. Second, it was filed prior to the issuance of the final decision in this matter and premature. Regardless, as discussed below, the request lacks merit and is denied.

District seeks "monetary sanctions" under Title 20 United States Code sections 1415(i)(3)(B)(i)(II) and (III); however, those sections address the authority of the district courts of the United States to award reasonable attorneys' fees, not sanctions, to a prevailing educational agency in a due process dispute. The authority of OAH is limited by Education Code section 56507, subdivision (d), to indicating the extent to which each party has prevailed on each issue heard and decided. Neither statute confers authority on OAH to award monetary sanctions of attorney fees to District because it was the prevailing party.

California Code of Regulations, Title 5, section 3088, subdivision (b), authorizes the presiding hearing officer to issue contempt sanctions, and Government Code section 11455.30 authorizes monetary sanctions in administrative proceedings for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. However, although Student's theories of the case were ultimately unsuccessful, Student's case was not completely devoid of merit.

The decision found that Parent failed to provide Student's March 20, 2014 individualized educational program team with the information required by California Code of Regulations, tit. 5, section 3051.4, subdivision (d), for the team to recommend home instruction, and that Parent's confusion over the required information was unreasonable. However, there were sufficient facts to raise a meritorious dispute: District provided Parent with a home hospital request form insufficient for Student's purposes; District asked Parent for both required information and information that was desirable but not required; District convened an IEP team meeting to consider Student's home instruction request on receipt of less than the information required, albeit anticipating that Parent would bring additional information to the meeting or that alternative methods of providing the information could be arranged; and District engaged in the common but confusing practice of referring to home instruction under the IDEA (20 U.S.C. § 1400, et seq.) as "home hospital instruction," a term also used to describe a temporary restrictive placement for nondisabled general education students that does not involve an IEP team. Although Student displayed a profound misunderstanding of the mandatory nature of Section 3051.4, subdivision (d), his arguments of substantial compliance and excuse were not so unreasonable as to warrant imposition of sanctions for bad faith action or frivolous tactics in filing and prosecuting Student's due process hearing request.

As to District's request for sanctions for the late arrival of Student's counsel to the hearing, the request is denied for several reasons. First, Student's counsel timely notified OAH and District's counsel of her delay in arriving to the hearing, and by the time she was informed that the hearing would begin as scheduled, Student's counsel was en route to the hearing by train and unable to change her arrival time. Second, although counsel failed to comply with the start time imposed by the prehearing conference order, and attempted to unilaterally override that order, the resulting delay was less than a full hour. Third, the administrative law judge discussed the delay with the parties on the record when the first scheduled witness was recalled, and stated that sanctions would not be imposed despite the minor inconvenience to party representatives and the witness.

IT IS SO ORDERED.

DATE: October 9, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings