

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015040570

ORDER OF DISMISSAL WITH
PREJUDICE AND DENYING
STUDENT'S MOTION FOR FEE
SHIFTING EXPENSES

On April 9, 2015, Los Angeles Unified School District filed a due process complaint naming Parent on Student's behalf as respondent. Administrative Law Judge Laurie Gorsline presided over the hearing on June 2, 2015. Both parties presented documentary evidence and witness testimony. At the conclusion of the presentation of evidence, the ALJ continued the hearing to June 12, 2015, to allow the parties to submit written closing briefs.

On June 10, 2015, District submitted a request to withdraw its due process hearing request. District's request to withdraw did not specify whether the matter was being withdrawn with prejudice or without prejudice.

On June 12, 2015, Student submitted his closing brief and a declaration from counsel in support of "motion for fee shifting expenses" and in opposition to District's request to withdraw the matter. In the declaration, counsel stated that Student had requested an independent speech and language evaluation from District on April 8, 2015, and a day later District's served its due process complaint. Counsel also stated that the parties had unsuccessful settlement discussions beginning on May 29, 2015, and to date, Student had incurred over \$18,000 in fees and expenses.

On June 17, 2015, District filed its response. District argued its decision to withdraw the case was based on an evaluation of the evidence at hearing, and that dismissal was appropriate because it had agreed to provide the requested independent educational evaluation. District attached its June 11, 2015 letter to Student offering the IEE and a list of three District-approved assessors. District contended fee shifting was not appropriate because it did not engage in bad faith actions or tactics which were frivolous or intended to cause unnecessary delay.

On June 18, 2015, Student filed his response. Student contended dismissal was not appropriate because a dispute between the parties about the independent evaluation still existed. Student argued District failed to advise Student of his right to select someone other

than those assessors proposed by District, and that District failed to provide Parent with its independent educational evaluation policy or criteria.

APPLICABLE LAW AND DISCUSSION

Dismissal

Neither the Individuals with Disabilities Education Act nor the California Administrative Procedures Act specifically address motions to withdraw complaints after a due process hearing commences. Although not binding in special education matters, the Code of Civil Procedure provides guidance in this situation. Specifically, Code of Civil Procedure section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion thereof, with or without prejudice prior to the actual trial commencing. Code of Civil Procedure section 581, subdivision (e), states that after a trial commences a court will dismiss a complaint with prejudice, if the plaintiff's requests a dismissal, unless all parties consent to dismissal without prejudice or the court finds good cause for a dismissal without prejudice.

Here, District requested dismissal of its case after the hearing commenced and before the matter was submitted for decision. While Student claimed that dismissal is inappropriate because a dispute still exists as between the parties regarding the IEE, Student cited to no binding authority which compels OAH to preclude District from dismissing its own due process complaint after the administrative hearing commences, even where a dispute still exists. Previous OAH orders are informational and not binding on subsequent cases. District's request to withdraw is granted.

Notwithstanding District's a right to dismiss its case, District failed to demonstrate either that the parties agreed to dismissal without prejudice, or that good cause exists to permit dismissal without prejudice. All of testimonial evidence was concluded and the right to request admission of documentary evidence had passed. A dismissal without prejudice would improperly allow District to dismiss its case and start over again on another day with another judge. (See Cal. Code Civ. Proc., § 581, subd. (e).) Accordingly, dismissal of District's case with prejudice is appropriate.

If a dispute still exists regarding the IEE as Student contends, Student has the option of taking steps to resolve the disputed issue(s) with District, and if the issue(s) cannot be resolved, Student may file his own case to have OAH decide the dispute.

Fee Shifting

An award of reasonable attorney's fees to the prevailing parent, guardian, or pupil may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction. (See 20 U.S.C.

1415(i)(3); Ed. Code, §56507, subd. (b).) OAH is not a court of competent jurisdiction within the meaning of Education Code section 56507, subdivision (b).

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.”].) A party may be ordered to pay expenses of a party, or OAH 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, subd. (a); Gov. Code, §11455.30.)

Here, Student failed to demonstrate that District engaged in bad faith actions or tactics that were frivolous or solely intended to cause unnecessary delay, justifying an award of sanctions. To the extent Student seeks fees based on the contention Student is the prevailing party, OAH has no jurisdiction to award such fees. Student’s request for reimbursement of fees and expenses is denied. This order does not preclude Student from seeking recovery of fees and expenses in a court of competent jurisdiction.

ORDER

1. District’s request that OAH Case No. 2015040570 be withdrawn is granted.
2. OAH Case No. 2015040570 is dismissed with prejudice.
3. No written decision will be issued in this matter.
4. Student’s motion for fee shifting expenses as the prevailing party is denied.
5. Student’s claim for fees as sanctions is denied.

IT IS SO ORDERED.

Dated: June 22, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings