

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016020421

v.

PANAMA-BUENA VISTA UNION SCHOOL  
DISTRICT,

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PANAMA-BUENA VISTA UNION SCHOOL  
DISTRICT,

OAH Case No. 2016020657

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING DISTRICT'S  
MOTION FOR SANCTIONS

On March 22, 2016, District filed a motion for sanctions against Student and/or Student's counsel. Student filed an untimely opposition on April 4, 2016, which was not considered. District made its motion for sanctions on grounds that Student's violation of the doctrine of res judicata assertion in this matter, considered in light of other attempts by Student to overturn his expulsion through filings with OAH and in other forums, demonstrated that Student's expedited request for due process in this matter was filed "in bad faith for the purpose of harassment, and was unmeritorious, imprudent and frivolous." District seeks sanctions in the amount of District's costs incurred responding to Student's request for due process in this matter, which totaled \$58,891.60 as of District's filing of its request for sanctions.

APPLICABLE LAW

In certain circumstances, an ALJ presiding over a special education proceeding may shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code Regs., tit. 1, § 1040; 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 ["[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).)

An ALJ presiding over a hearing 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.” (Gov. Code, § 11455.30, subd. (a); Cal. Code Regs., tit. 1, § 1040; Cal. Code Regs., tit. 5, § 3088, subd. (e).) The ALJ shall determine the reasonable expenses based upon a declaration setting forth specific expenses incurred as a result of the bad faith conduct. (Cal. Code Regs., tit.1 § 1040(c).)

“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).)

Whether an action is frivolous is governed by an objective standard: would any reasonable attorney would agree that the action is totally and completely without merit? There must also be a showing of an improper purpose; that is, subjective bad faith on the part of the attorney or party to be sanctioned. An improper purpose may be inferred from the circumstances. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

## DISCUSSION

On February 9, 2016, Student requested an expedited hearing on grounds that District had suspended Student for more than 10 days in 2014 and then expelled him from school on January 13, 2015 for his conduct occurring between August 18, 2014, and November 14, 2014, without first determining whether this conduct was a manifestation of his disability, as required under title 20, United States Code, section 1415(k). Student alleged that he was entitled to manifestation determination meetings at the time of his suspension and expulsion as a child then-eligible for special education, based on a 2007 individualized education program team meeting that found Student eligible for special education under the category of speech and language impairment. Student alleged that District had improperly terminated his eligibility and exited him from special education in his February 2008 IEP without Parental consent, and that he therefore remained eligible for special education in 2014-2015.

OAH dismissed Student’s expedited claims on March 3, 2016, finding that they were barred by OAH’s prior decisions in OAH case numbers 2014100290 and 2015100237 in accordance with the doctrine of res judicata set forth in *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-97.

Here, Student’s violation of the doctrine of res judicata is an insufficient basis to conclude that Student’s expedited causes of action were totally and completely without merit or asserted for the sole purpose of harassing District. The law regarding the application of res judicata in the context of special education due process proceedings, and its interaction

with Education Code section 56509, is complicated, and not such well-settled law that any reasonable attorney would agree that, assuming Student's claims in support of his expedited causes of action were meritorious, asserting them in this matter was a clear violation of res judicata, and totally and completely without merit or brought for purposes of harassment only, or in bad faith.

ORDER

District's motion for sanctions is denied.

DATE: April 11, 2016

DocuSigned by:



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ROBERT G. MARTIN

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Office of Administrative Hearings