

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

REDONDO BEACH UNIFIED SCHOOL  
DISTRICT AND SOUTHWEST SELPA.

OAH CASE NO. 2009080516

ORDER DENYING SANCTIONS

On August 14, 2009, Tania L. Whiteleather, attorney for Student, filed a Due Process Hearing Request (complaint) against Redondo Beach Unified School District (RBUSD) and Southwest Special Education Local Plan Area (SELPA).

On September 9, 2009, Nancy Finch-Heuerman, attorney for RBUSD, filed a Motion to Dismiss, alleging that Student had failed to state a claim over which OAH had jurisdiction, and that RBUSD was not a proper party to this action. OAH received no response from Student to RBUSD's motion.

On September 11, 2009, Karen E. Gilyard, attorney for SELPA, filed a Motion to Dismiss, alleging that SELPA was not a proper party to this action. On September 14, 2009, Student filed an opposition to SELPA's motion. On September 15, 2009, SELPA filed a reply to Student's opposition.

On September 21, 2009, the Office of Administrative Hearings (OAH) issued an Order that granted RBUSD's motion to dismiss, and dismissed the SELPA because Student's claim against the SELPA was moot.

On October 23, 2009, RBUSD, moved for sanctions against Student for frivolous and bad faith tactics based in filing the complaint because Student knew that OAH did not have jurisdiction to hear Student's complaint. On October 29, 2009, Student filed an opposition to RBUSD's motion for sanctions.

## APPLICABLE LAW

An Administrative Law Judge (ALJ) is authorized to issue sanctions to shift the expenses to a party acting in bad faith, or using tactics that are frivolous or solely intended to cause unnecessary delay to the other party and/or their attorneys. (Gov. Code, § 11455.30; Code Civ. Proc., § 128.5.) Sanctions may include reasonable attorneys' fees and expenses. (*Ibid.*) The authority of an ALJ to shift expenses in special education matters is further supported by the California Code of Regulations, title 5, section 3088. The authority provided to an ALJ in special education hearings is similar to other administrative hearings held pursuant to Government Code section 11455.30.<sup>1</sup>

Government Code section 11455.30 references Code of Civil Procedure section 128.5. California cases applying section 128.5 hold that a trial judge must state specific circumstances giving rise to the award of expenses and articulate with particularity the basis for finding the sanctioned party's conduct reflected tactics or actions that were performed in bad faith, and were frivolous, designed to harass, or designed to cause unnecessary delay. (*Childs v. Painewebber Inc.* (1994) 29 Cal.App.4th 982, 996; *County of Imperial v. Farmer* (1998) 205 Cal.App.3d 479, 486.) The trial judge must provide advanced notice and the opportunity to be heard before sanctions can be imposed. (*Pacific Trends Lamp and Lighting Products, Inc. v. J. White, Inc.*, (1998) 65 Cal.App.4th 1131, 1136.) The purpose of the statute is not only to compensate, but it is also a means of controlling burdensome and unnecessary legal tactics. (*On the Cow Hollow Properties* (1990) 222 Cal.App.3d 1577.) Bad faith is shown when a party engages in actions or tactics that are without merit, frivolous, or intended to cause unnecessary delay. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.) However, the bad faith requirement does not impose a determination of evil motive, and subjective bad faith may be inferred. (*Id.*, at p. 702.)

A District Court or state court has jurisdiction to award a local education agency attorneys' fees "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 cost of litigation." (20 U.S.C. § 1415(i)(3)(B)(ii) and (iii); 34 C.F.R. § 300.517(a)(ii) and (iii) (2006).)

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<sup>1</sup> Section 3088 refers to "presiding hearing officers." However, the ALJ presiding over the hearing is the presiding officer. Government Code section 11405.80 states: "Presiding officer means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding." This section makes clear that an ALJ who presides in an adjudicative proceeding is the "presiding officer," a point confirmed in *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F. 3d 1026, 1029, where the court stated, "Clearly, § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."

## **DISCUSSION**

RBUSD contends that Student and Student's attorney acted in bad faith and engaged in frivolous tactics in filing the complaint and continued prosecution of this action even though Student and Student's attorney knew that OAH did not have jurisdiction to hear Student's claim. Because RBUSD filed its motion after OAH dismissed Student's complaint on September 21, 2009, OAH does not have jurisdiction to hear RBUSD's motion as jurisdiction now rests with the District Court or state court. Therefore, RBUSD's motion for sanctions is denied.

## **ORDER**

RBUSD's motion for sanctions is denied.

Dated: November 3, 2009

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings