

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WINDSOR UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010050796

ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION
FOR SANCTIONS

On May 24, 2010, Parent, acting on behalf of Student, filed a request for due process hearing (complaint) against the Windsor Unified School District (District).

On May 28, 2010, the District moved to dismiss the complaint on the ground that the Office of Administrative Hearings (OAH) lacks jurisdiction to decide it. On June 4, 2010, the District moved for an award of sanctions on the ground that the filing of the complaint was frivolous and in bad faith.

On June 7, 2010, Parent filed an opposition to both motions.

APPLICABLE LAW

Enforcement of Settlement Agreements

The proper avenue for enforcement of an agreement settling a special education due process dispute is by administrative complaint to the California Department of Education. OAH had no jurisdiction to hear such a case. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) However, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., March 27, 2007, No. 05-04977) 2007 WL 949603, a district court later held that OAH has jurisdiction to adjudicate claims alleging breach of a mediated settlement agreement that resulted in denial of a free appropriate public education (FAPE). (*Id.*, pp. 6-7.)

Sanctions

In a special education due process matter, an Administrative Law Judge (ALJ) has the authority to award attorneys' fees under the Government Code and the California Code of Regulations. Government Code section 11455.30 provides:

- (a) The presiding officer 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 as defined in Section 128.5 of the Code of Civil Procedure.

(b) The order, or denial of an order, is subject to judicial review in the same manner as a decision in the proceeding. The order is enforceable in the same manner as a money judgment or by the contempt sanction.

That section is implemented by California Code of Regulations, title 1, section 1040, which provides:

(a) The ALJ may order a party, a party's 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.

(1) 'Actions or tactics' include, but are not limited to, the making or opposing of Motions or the failure to comply with a lawful order of the ALJ.

(2) 'Frivolous' means

(A) totally and completely without merit or

(B) for the sole purpose of harassing an opposing party.

(b) The ALJ shall not impose sanctions without providing notice and an opportunity to be heard.

(c) The ALJ shall determine the reasonable expenses based upon testimony under oath or a Declaration setting forth specific expenses incurred as a result of the bad faith conduct. An order for sanctions may be made on the record or in writing, setting forth the factual findings on which the sanctions are based.

A comprehensive discussion of the grounds for sanctions under Code of Civil Procedure section 128.5 is set forth in *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635-637. A trial court may impose sanctions under Code of Civil Procedure section 128.5 against a party, a party's attorney, or both, for "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." A bad faith action or tactic is frivolous if it is "totally and completely without merit" or if it is instituted "for the sole purpose of harassing an opposing party." (*Id.*, subd. (b)(2).) Whether an action is frivolous is governed by an objective standard: whether any reasonable attorney would agree it is totally and completely without merit. There must also be a showing of an improper purpose; i.e., 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

Motion to Dismiss

Parent's complaint alleges that, in a settlement agreement ending a previous special education due process dispute, the District agreed to pay for two independent educational evaluations: a speech and language assessment, and an academic assessment. The complaint expressly disclaims any allegation that the District's failure to pay for the assessments denied Student a FAPE:

This complaint is not with regards to the denial of FAPE which resulted from the district[‘s] ... actions in this matter This complaint is with regards only to the district's refusal to comply with the agreement in the settlement and in previous written documents to reimburse the parent for the evaluations as agreed in the contract they signed and so that the parent may formally exhaust her administrative remedies in the collection of these funds from the district and school prior to filing a civil claim.

Under the applicable law set forth above, OAH has no jurisdiction to enforce a settlement agreement unless it is alleged that failure to comply with the agreement has resulted in a denial of FAPE. Since the complaint makes no such allegation, it will be dismissed.

Sanctions

The District argues that Parent, when she filed the instant complaint, was well aware that OAH has no jurisdiction to act on it. In another action between these parties, Parent moved to dismiss the District's complaint on the grounds, *inter alia*, that "[t]he OAH does not have jurisdiction, authority or venue to interpret the contract represented by the settlement agreement," that "OAH has no jurisdiction or authority to enforce a settlement agreement," and that "OAH does not have jurisdiction to enforce a contract." (OAH Case No. 2010312210, Student's Motion to Dismiss, filed March 21, 2010, at pp. 2, 4.)¹

¹ Official notice is taken of the pleadings on file in OAH Case No. 2010312210. The District also argues that, in ruling against Parent's motion to dismiss in that case, OAH clearly informed her of the pertinent rule of law in the following passage:

... Parent makes ... the argument that OAH lacks the authority to interpret and enforce the February 9th settlement agreement. However, the Complaint does not seek an Order holding that Parent has breached the agreement. Instead, the Complaint alleges that the District and Insight are entitled to reassess Student based upon the existence of conditions that warrant such a reassessment. OAH has the authority to determine such a claim.

(OAH Case No. 2010312210, Order Denying Motion to Dismiss, March 30, 2010). That passage does not have the effect the District attributes to it, because it does not clearly delineate the rule of *Wyner, supra*, and *Pedraza, supra*.

Parent's motion to dismiss in that other matter reveals a fairly clear understanding of the governing rule of law, and the District argues that her understanding is enough to prove that she filed this matter in bad faith.

However, in order to justify sanctions, the ALJ must find that Parent's action was "frivolous or solely intended to cause unnecessary delay." (Cal. Code Regs., tit. 5, § 1040, subd. (a).) The language from the complaint in this matter quoted above reveals that Parent had an additional purpose in filing the complaint, which was to exhaust her administrative remedies. Apparently Parent misunderstands the doctrine of exhaustion of administrative remedies to require the filing of a complaint with an agency that clearly does not have authority to consider it. At page two of her opposition to the motion for sanctions, Parent states:

The Parent has no choice but to file ALL causes of action at the Office of Administrative Hearings, whether or not the OAH has jurisdiction over those causes of action [A]bsent a ruling from the OAH that it does not have jurisdiction over a particular matter, the parent cannot file a cause of action in federal or state court.

This is, of course, a serious misstatement of the doctrine of exhaustion of administrative remedies; a litigant need only exhaust an administrative remedy when there actually is such a remedy and the agency has jurisdiction to consider the claim. There is no requirement that every cause of action, no matter how remote from OAH's jurisdiction, need be pled and rejected before Parent can seek relief in court.

However, Parent is acting *in propria persona* and is not a lawyer. The District makes no showing that she deliberately misunderstood or misstated the exhaustion requirement in filing the instant complaint. As the moving party, the District has therefore not established that Parent acted in bad faith, frivolously, or solely for the purpose of harassing the District or causing delay.² On this record, Parent's misunderstanding of the exhaustion requirement may have been in good faith; at least the District has not proved otherwise. The motion for sanctions will therefore be denied.

ORDER

1. The District's motion to dismiss the complaint is granted. All dates are vacated. The matter is closed.

² The District points out that Parent has filed several other due process complaints against it and then dismissed them short of hearing. However, it makes no attempt to demonstrate that any of those filings or dismissals was in bad faith.

2. The District's motion for sanctions is denied.

Dated: June 21, 2010

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings