

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MILPITAS UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011050156

ORDER DENYING CROSS-MOTIONS
FOR SANCTIONS

On March 31, 2011, Student's counsel, on behalf of Student and Parents, filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (Student's Complaint) in the Matter Of Parents On Behalf Of Student v. Milpitas Unified School District, OAH Case No. 2011040047. Student's Complaint alleged, in pertinent part, that District had denied Student a free appropriate public education (FAPE) by failing to implement Student's interim individualized educational program (IEP) after he transferred into District; failing to accurately identify Student's unique needs; failing to properly develop an educational program; failing to develop adequate goals; failing to consider parental input; and developing IEPs that were not reasonably calculated to permit Student to make educational progress. Student's Complaint contained a Notice of Representation pursuant to Education Code, section 56507, subdivision (a), designating Student's counsel as the representative for Student's Complaint.

On May 2, 2011, District filed its own Due Process Hearing Request (District's complaint) against Student, designated by OAH as Case No. 2011050156. District's complaint sought, in pertinent part, to defend its "Supplement to Psychoeducational Reports" and its adaptive behavior observation conducted on Student. District served District's Complaint on Student's counsel.

On May 4, 2011 Student's counsel filed a dismissal of Student's Complaint. Thereafter, on May 6, 2011, Student's counsel filed a letter with OAH in District's Case, OAH Case No. 2011050156, alleging that service of District's complaint on her had been improper. The letter stated that District did not serve its complaint directly on Student or Parents, but rather on counsel, who did not represent Student or Parents in District's case. Student's counsel's letter further requested that OAH consider District's case improperly filed, and requested reimbursement for Student's counsel's fees in drafting the letter. On May 11, 2011, District filed a dismissal of District's Case.

Simultaneously, District filed an Opposition to Student's Counsel's Request for Reimbursement and its own Request for Sanctions against Student's Counsel. District stated that its service of its Complaint on Student's counsel had been proper by virtue of counsel's representation of Student in Student's Complaint, and her Notice of Representation therein.

District also stated that Student's counsel had attended IEP meetings with Parent to review the Supplement to Psychoeducational Reports and adaptive behavior observation that were at issue in District's complaint.

ANALYSIS

Education Code section 56507, subdivision (a), provides that if either party to a due process hearing intends to be represented by an attorney in the hearing, notice of that intent shall be given to the other party at least 10 days prior to the hearing. Nothing therein states or indicates that counsel's representation of a student in one due process matter constitutes representation for all purposes pertaining to that student.

California Code of Regulations, Title 5, section 3083, governs service of notice, motions, or other writings pertaining to special education due process hearing procedures, and provides for mail or personal service to parties at their last known address and, "if the person or entity is a party with an attorney or other authorized representative of record in the proceeding," to the party's attorney or other authorized representative. Nothing therein states or indicates that counsel's representation of a student in one due process matter renders service on that counsel proper regarding any other due process matters, even those regarding the same student.

An Administrative Law Judge 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. (Cal. Code Regs., tit. 5, § 3088, incorporating Gov. Code, § 11455.30.)

Here, the sole remaining dispute in these two cross-actions, which have both now been dismissed, is the parties' cross-motions for sanctions arising out of District's arguably improper service of its Complaint on Student's counsel, and Student's counsel's response. Neither party has established bad faith, or tactics that are frivolous or solely intended to cause unnecessary delay. Accordingly, both motions are denied.

ORDER

The requests for sanctions filed by District and Student are denied.

Dated: May 12, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings