

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKDALE JOINT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011090214

ORDER DENYING DISTRICT'S
MOTION FOR SANCTIONS

Student, through his parent, filed a request for due process (complaint) naming the Oakdale Joint Unified School District (District) and unspecified District employees on September 6, 2011. On September 16, 2011, the District filed a motion to strike Student's complaint on the grounds that it only alleged violations under the Americans with Disabilities Act (42 U.S.C. § 120101), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the federal Civil Rights Act (42 U.S.C. § 1983), all of which were outside of the jurisdiction of the Office of Administrative Hearings (OAH). The District also alleged that Student's complaint should be stricken because all issues raised and all parties named had been the subject of a prior due process hearing in OAH case numbers 2010050392 and 2010050679 (first case), in which OAH had issued a decision on April 5, 2011, finding in favor of the District on all issues. The District further alleged that the complaint should be stricken because many of the issues were beyond the applicable two-year statute of limitations, because many issues were vague and uncertain, and because Student raised claims pertaining to other individuals.

Student filed an opposition to the District's motion to strike on September 20, 2011. On September 21, 2011, OAH issued an order treating the District's motion as a motion to dismiss and granting the motion without leave to amend based solely on the grounds that all claims raised by Student were outside of the jurisdiction of OAH. In the order OAH did not address the other grounds for dismissal raised by the District in its motion. On September 22, 2011, OAH closed this case.

On September 26, 2011, the District filed a motion for sanctions against Student, his parent, and his attorney. The District contends that sanctions are warranted because Student's complaint is frivolous and filed in bad faith with the only purpose being to harass the District and its employees and to prolong the litigation from the prior due process hearing. The District informs that Student has appealed the OAH decision in his first case to federal court. That appeal raises contentions for the first time that the District violated Student's rights under the Americans with Disabilities Act, Section 504 of the Rehabilitation

Act, and the federal Civil Rights Act. The District has moved to dismiss those portions of Student's federal appeal which raise issues not previously addressed by Student in the first case on the grounds that Student failed to exhaust administrative remedies prior to raising the issues in his appeal. The District's motion to dismiss is still pending.

In its motion for sanctions, the District contends that Student's instant complaint is frivolous for the same reasons it moved to strike the complaint in its earlier pleading. The District asserts that it is entitled to sanctions in the amount of \$5,697.50, which is based on calculating the hourly rate of its attorney for his work on every aspect of the instant case. This includes reviewing and researching Student's due process request, research for and preparation of District's motion to strike as well as a reply to Student's opposition to the motion (which was never filed with OAH because OAH issued its decision prior to the District filing its reply), and researching and preparing District's motion for sanctions.

Student has not filed an opposition or otherwise responded to the District's motion for sanctions.

APPLICABLE LAW

Motion to Shift Expenses as Sanctions

In certain circumstances, an administrative law judge (ALJ) 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.”].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may “order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel” to OAH (as the successor to the California Special Education Hearing Office) 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, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, “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. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

“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).) Filing a complaint without serving it on the other party is not within the definition of “actions or tactics.” (*Ibid.*) “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).) A finding of “bad faith” does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

Attorney’s Fees

An award of reasonable attorney's fees to the prevailing parent, guardian, or pupil, as the case may be, 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. (Ed. Code, § 56507, subd. (b)(1).)

An award of attorney’s fees as part of the costs to a prevailing party who is a state or local educational agency may be made by a court of competent jurisdiction in its discretion, and in accordance with Section 1415(i)(3) of Title 20 of the United States Code, under the following circumstances:

(A) Against the attorney of a parent who files a due process hearing request 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.

(B) Against the attorney of a parent, or against the parent, if the parent's due process hearing request 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.

The grounds for awarding attorney’s fees to an educational agency are similar to those for shifting expenses, as discussed above.

DISCUSSION

Here, the District’s motion for sanctions fails because only the ALJ who is presiding over the matter may place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) As this matter was closed on September 22, 2011, four days before the District filed its motion for sanctions, there is no longer any ALJ presiding over the case. Because it is closed, OAH no longer has jurisdiction over the matter. It would therefore be improper to entertain the District’s motion at this time.

Additionally, the District is, in effect, asking OAH to award it attorney's fees. Its motion for sanctions requests reimbursement for every action its attorney took during the instant case, from the time the complaint was filed, up through and including preparation of the instant motion for sanctions. As stated above, OAH does not have jurisdiction to award attorney's fees to any of the parties to a due process proceeding. Rather, the party seeking attorney's fees must do so by filing a motion with a court of competent jurisdiction. In the case of an educational agency, such as the District here, which asserts a right to attorney's fees, it must show that the due process claim was frivolous, unreasonable, or without foundation, or was filed to harass, cause unnecessary delay, or to needlessly increase the cost of litigation. These are essentially the same grounds supporting a motion for sanctions against a party. Since the instant case has been closed, and since OAH has no jurisdiction to award attorney's fees, the District's proper manner of redress is to a court of competent jurisdiction requesting that it award it the attorney's fees it requests in the instant motion for sanctions.

ORDER

The District's motion for sanctions is denied.

Dated: October 12, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings