

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NAPA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012051226

ORDER DENYING STUDENT'S
MOTION FOR SANCTIONS

On May 30, 2012, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming the Napa Valley Unified School District (District).

On October 26, 2012, Student filed motion for sanctions against District and its attorney. On October 30, 2012, District filed its opposition to Student's motion for sanctions. The specific Student's allegations and District's response are discussed below.

APPLICABLE LAW

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

Student contends that the District engaged in bad faith litigation tactics by engaging in certain acts and refusing to engage in some acts. Specifically, Student contends that the District engaged in bad faith litigation tactics by filing two motions for reconsideration (MFR) of OAH's order dated September 24, 2012, which granted Student's leave to amend his complaint. Student argues that District's MFR was without legal or factual basis, and

borders on frivolous or bad faith tactics.¹ Further, Student alleges that the attorney for District's failure to agree to the filing of Student second amended complaint, and the failure to rescind two Subpoena Duces Tecums issued by District, were all in bad faith. Thus, Student requests sanctions in the amount of \$2135 against District and its attorney.

In her opposition, the attorney for District presented a detailed chronology of events, motions and rulings in this case, and listed various rationales for making certain requests, for opposing various requests, and for seeking reconsiderations of OAH's ruling. The attorney for District's opposition was supported with sworn declaration given under penalty of perjury. Based on the opposition, the attorney for District maintains that District's opposition to Student's two requests to amend the complaint, the filing of various motions and District's actions in this case were well-intentioned and devoid of bad faith. The attorney for District further argues that she is required to present a diligent defense of her client, and that her actions in this case were motivated by that obligation to District. The evidence and the record do not support a different conclusion, and as a result bad faith is not found.

Therefore, Student did not establish that the District engaged in bad faith litigation tactics based on the evidence presented. Accordingly, Student's motion for sanctions is denied.

ORDER

Student's motion for sanctions is denied.

IT IS SO ORDERED.

Dated: November 2, 2012²

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

¹ The undersigned ALJ fails to understand this argument, as District's MFR was against OAH's ruling. Student is not required to file a response or do anything in the aid of the ALJ that issue the challenged ruling, who must address the MFR.

² The undersigned ALJ ruled on this motion on October 31, 2012 prior to the receipt of Student's Peremptory Challenge.