

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELMONT-REDWOOD SHORES  
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2012080014

ORDER DENYING DISTRICT'S  
MOTION FOR SANCTIONS

On July 31, 2012, Student filed a request for a due process hearing (complaint) naming the Belmont-Redwood Shores Elementary School District (District). On August 6, 2012, the District filed a motion for sanctions, along with a motion to dismiss and a notice of insufficiency (NOI).<sup>1</sup> Student filed an opposition on August 9, 2012. The District specifically requests that the Office of Administrative Hearings (OAH) award the District monetary sanctions against Student to reimburse it for the costs of responding to Student's complaint.

APPLICABLE LAW

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

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<sup>1</sup> The District’s NOI and motion to dismiss are each addressed in separate orders.

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.)

## DISCUSSION

The District contends that Student’s complaint identified issues that are not properly before OAH as they are mere claims of a breach of a settlement agreement and/or have been waived pursuant to the settlement agreement. Additionally, the District contends that Student’s only proper free and appropriate public education (FAPE) issue is insufficiently pled. Based on this interpretation of Student’s complaint, the District claims that Student filed a frivolous action for the sole purpose of harassing the District. The District’s motion fails.

As more fully addressed in a separate order denying the District’s motion to dismiss, Student’s complaint raises allegations that the District denied Student a FAPE by failing to comply with the services and reimbursement for a private placement agreed to in the parties’ 2011 settlement agreement. Additionally, the parties agreed that Student’s Applied Behavior Analysis services and placement funding reimbursement would be incorporated into Student’s individualized education program (IEP) by way of an addendum. Therefore, Student’s claims for reimbursement also constitute valid FAPE claims. The waiver language in the 2011 settlement agreement did not incorporate a waiver of any implementation claims and Student specifically retained the right to bring future claims alleging the District’s failure to meet its obligations to provide services set forth in the Student’s IEP and in the settlement agreement.

Additionally, as more fully addressed in a separate order, the undersigned denied the District’s NOI and found Student’s Issue Five, the only issue challenged by the District, to be sufficient. Student is entitled to file a complaint alleging a denial of FAPE. It is the District’s burden to prove that Student’s act of filing the complaint was solely to harass the District and was in bad faith. The record does not support this contention. Accordingly, the District’s motion for sanctions is denied.

ORDER

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

Dated: August 9, 2012

/s/

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THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings