

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015100793

ORDER DENYING REQUEST FOR
SANCTIONS

On October 21, 2015, at 5:09 p.m., Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Murrieta Valley Unified School District. On October 27, 2015, District filed a Motion to Dismiss, alleging that Student's claims regarding the October 21, 2013 individualized educational program were barred by the two-year statute of limitations because the filing date of Student's complaint was in fact October 22, 2015. On October 29, 2015, Student filed an opposition that asserted that the complaint was filed on October 21, 2015, and that also the complaint contains allegations that occurred within the two-year statute of limitation. District filed a reply brief on October 30, 2015, which also contained a request for sanctions, which Student responded to that day. On November 3, 2015, OAH granted District's motion to dismiss, but did not rule upon the motion for sanctions.

APPLICABLE LAW

In a special education due process matter, an Administrative Law Judge 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

District contends that Student's opposition to District's motion to dismiss was made in bad faith and was frivolous as Student's attorney knew that Student's amended complaint was faxed to OAH after 5:00 p.m., on October 21, 2015. While Student knew or should have

known that the complaint was faxed to OAH after 5:00 p.m., Student's opposition contained other reasons why OAH should not dismiss the complaint for being outside the statute of limitations that were not frivolous. Accordingly, District's motion for sanctions is denied.

ORDER

District's motion for sanctions is denied

DATE: November 6, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings