BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: IRVINE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011081083 ORDER DENYING STUDENT'S REQUEST FOR SANCTIONS

On August 25, 2011, District filed a request for due process (complaint) naming Student as Respondent. The parties stipulated to an amended complaint and on September 21, 2011, District filed an amended complaint. The case was scheduled to proceed to hearing on Monday, March 12 (beginning at 1:30 p.m.), and March 13, 14 and 15, 2012. On Friday, March 9, 2012, District withdrew its case. On March 13, 2012, Student filed a motion for sanctions claiming that District filed its dismissal on the eve of the due process hearing for the sole purpose of causing Student unnecessary legal expenses. District opposed the motion and Student filed a reply to District's opposition.

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.

California Code of Regulations, title 1, section 1040, 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.

The California Court of Appeal discussed what is required to impose sanctions under California Code of Civil Procedure section 128.5 in the case of *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635. In discussing what constitutes bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, the court stated the action taken by the party or its attorney must be solely for the purpose of harassing an opposing party. Whether an action is frivolous is governed by an objective standard: any reasonable attorney would agree it is totally and completely without merit. There must also be a showing of an improper purpose, such as subjective bad faith on the part of the attorney or party to be sanctioned. (*Levy v. Blum, supra*, 92 Cal.App.4th at p. 635.) This subjective bad faith requirement does not impose a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

Like all petitioners filing due process hearing requests, including students, District is entitled to withdraw its complaint at any time. District's withdrawal in and of itself is not sanctionable conduct, and surely Student's attorney would not want such a standard applied to matters brought by students. More importantly, Student's allegations fail to demonstrate that District's actions were frivolous or solely intended to harass Student. This is particularly true when District's opposition demonstrates that some delays in the proceedings were based on actions by Student. Under the facts argued by both parties, it simply cannot be determined that District's withdrawal was frivolous or motivated solely by an improper purpose. As such, Student's motion is denied.

IT IS SO ORDERED.

Dated: April 4, 2012

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings