

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

VALLECITO UNION SCHOOL
DISTRICT and CALAVERAS COUNTY
SELPA,

Respondents.

OAH CASE NO. N 2007100140

**ORDER DENYING RESPONDENTS'
MOTION TO DISMISS; GRANTING
RESPONDENTS' MOTION TO
BIFURCATE HEARING; and
DENYING MOTION FOR SANCTIONS**

On October 4, 2007, attorney Kathleen L. Loyer, on behalf of Student, filed a request for a due process hearing (complaint) alleging that the Vallecito Union School District (District) and the Calaveras County Special Education Local Planning Area (SELPA) failed to provide her a free appropriate public education (FAPE). Student filed a second amended complaint on December 13, 2007. On December 29, 2007, OAH issued an Order that dismissed claims arising before October 4, 2005.

On April 21, 2008, OAH received from attorney Rodney L. Levin, on behalf of the Respondents, a Motion to Dismiss Student's claims that arose after September 1, 2006, or in the alternative, to bifurcate the hearing regarding Student's residency. Additionally, Respondents requested sanctions for Student's bad faith prosecution of this case. On April 24, 2008, OAH received Student's opposition brief. On April 25, 2008, Respondents' submitted a reply brief.

APPLICABLE LAW

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the public educational agency involved in the educational decisions of the child. That agency is determined by the residency of the pupil. (Ed. Code, §§ 48200, 56028.) If the District is not the district of Student's residency, the action has been brought against the wrong party.

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure of bifurcating issues for trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

An ALJ has the authority to subject a person to the issuance of a sanction to shift expenses from one party to another, when a party acts in bad faith. (Gov. Code, § 11455.30 [hereinafter, section 11455.30]).

Section 11455.30 states:

(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. [Hereinafter, section 128.5].

(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.

Section 128.5 states in relevant part:

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

DISCUSSION

Motion to Dismiss

Student's complaint, as limited by the December 29, 2007 Order, alleges that Respondent's failed to provide Student with a FAPE from October 5, 2005, through the present. Respondents assert that their obligation to educate Student ended when he and his family moved from the District to Orange County on September 1, 2006. Respondents included a copy of a court document in which Student's Parents stated under the penalty of

perjury that Student and his family moved to Orange County on September 1, 2006. In Student's opposition brief, Father states in a declaration under penalty of perjury that Student and his family did not change their place of residency until January 1, 2008. Because a triable issue of fact exists regarding Student's change of residency, it is premature to dismiss Student's claims on or after September 1, 2006, without a hearing.

Motion to Bifurcate

Respondents argue in the alternative that if OAH denies their Motion to Dismiss that the issue of Student's residency should be determined in a separate hearing before the matter of whether Respondents failed to provide Student with a FAPE. If Student moved from the District on September 1, 2006, and not January 1, 2008, the issues for hearing would be significantly limited; the hearing would not involve 15 months of evidence regarding whether Respondents denied Student a FAPE. Therefore, a separate hearing to determine when Student moved from the District would promote judicial efficiency, since a decision may significantly limit the issues, witnesses and evidence for hearing. Therefore, Respondents' Motion to Bifurcate is granted.

Motion for Sanctions

Respondents request that OAH impose monetary sanctions against Student for bad faith and frivolous tactics for seeking relief for acts that occurred after Student moved from the District. Because OAH will conduct a separate hearing to determine when Student left the District, it is premature to consider Respondents' motion. Respondents may raise the issues of sanctions at the residency hearing.

ORDER

1. Respondents' Motion to Dismiss is denied.
2. Respondents' motion for dismissal of claims that occurred on or after September 1, 2006, shall be set for an evidentiary hearing. The date, time and location of hearing shall be set at the prehearing conference May 2, 2008, at 10:00 a.m.
3. Respondents' Motion for Sanctions is denied.

Dated: April 30, 2008.



PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings