BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: RIVERSIDE UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2017050475 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER DISMISSING COMPLAINT; ORDER DENYING SANCTIONS

On June 2, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rommel Cruz, Office of Administrative Hearings. Jack Clarke, Attorney at Law, appeared on behalf of Riverside Unified School District. Elizabeth Eubanks, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. District's Request to Withdraw Complaint. District withdrew its complaint without prejudice. The complaint is dismissed without prejudice. The due process hearing scheduled for June 6, 2017 is vacated.

2. Student's Request for Sanctions against District. Student moved for sanctions against District alleging the complaint was filed in bad faith, for the sole purpose of harassing Parents and Student. Additionally, Student argued that District's delay in withdrawing its complaint immediately after Parents consented to the proposed assessment plan and waiting until a few days before the due processing hearing was scheduled to commence, resulted in wasted time and resources for all involved.

District contends it did not act in bad faith in filing the complaint and in withdrawing the complaint just days before the due process hearing. District responded that Student was presented with the proposed assessment plan in March 22, 2017 and did not obtain parental consent until May 15, 2017, six days after the complaint was filed. District expressed concern about the level of cooperation from Parents with respect to District's ability to conduct the assessments due to the litigious history and strained relationship between Parents and District. District was also concerned that Parents would revoke their consent.

APPLICABLE LAW AND DISCUSSION

California Code of Regulations, Title 5, section 3088, subdivision (b), authorizes the presiding hearing officer to issue contempt sanctions and/or place expenses in issue. Government Code section 11455.30 authorizes monetary sanctions in administrative proceedings for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

If the parents do not consent to a reassessment plan, the district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(3)(i), (c)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

District's complaint was not filed in bad faith for the sole purpose of harassing Parents and Student. At the time of the filing, Parents had not consented to the proposed assessment plan, which necessitated District to file for due process to assess Student without parental consent. Once Parents provided their consent to the proposed assessment plan, the delay in withdrawing the complaint cannot be said to be without justification. There is a litigious history between Parents and District which gave District reasonable concern regarding the level of cooperation it would receive from Parents with respect to completing the assessments. Additionally, any delay in addressing Student's Motion to Dismiss and District's opposition was due to OAH's decision to defer ruling until the prehearing conference. District cannot be faulted for allowing some time to pass to assess the level of cooperation from Parents and if necessary, to address the motion to dismiss on its merits. Therefore, Student's request for sanctions against District is denied.

ORDER

1. District's complaint is dismissed without prejudice. The due process hearing scheduled for June 6, 2017 is vacated.

2. Student's request for sanctions against District is denied.

DATE: June 2, 2017

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings