BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EMPIRE SPRINGS CHARTER SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018100555 ORDER DENYING MOTION FOR SANCTIONS; DISMISSING CASE

On October 11, 2018, Empire Springs Charter School filed a request for due process hearing with the Office of Administrative hearings, naming Parent on Behalf of Student. On October 24, 2018, OAH granted Student's request for continuance. On January 17, 2019, OAH granted Empire's request for continuance. On March 5, 2019, Empire amended its complaint and OAH set the hearing to begin on April 3, 2019. OAH convened a prehearing conference for this matter on March 25, 2019. On March 29, 2019, OAH denied Student's second request for continuance.

On April 1, 2019, Student revoked consent for special education and related services. On April 2, 2019, Empire withdrew its complaint and requested sanctions against Student. On April 3, 2019, Student opposed the motion and requested to dismiss the case. Empire replied to the opposition.

APPLICABLE LAW AND DISCUSSION

An Administrative Law Judge is authorized to issue sanctions to shift the expense to a party acting in bad faith, or using tactics that are frivolous or solely intended to cause unnecessary delay to the other party and/or their attorneys. (Cal. Code Regs., tit. 5, § 3088, incorporating Gov. Code, § 11455.30.) Here, Empire alleges that Student requested multiple motions to continue; requested changes of venue for mediation and hearing based upon transportation problems; failed to submit a prehearing conference statement; and disclosed confidential settlement negotiations to OAH. Empire also complains that Student's revocation of special education rights was untimely. All of which Empire asserts protracted the litigation in this matter and therefore warrants sanctions against Student.

Empire has not established that Student engaged in bad faith, or tactics that are frivolous or solely intended to cause unnecessary delay. For example, Student sought just two continuances and one was found to be supported by good cause by OAH. Empire also failed to establish that Student's request for alternative mediation and hearing venues was done in bad faith. While Student failed to submit a prehearing conference statement as

ordered by OAH, that conduct did not delay the due process hearing as Student was the respondent for this matter. Student's mother attended the prehearing conference and attempted to meet and confer with Empire's attorney, as ordered by OAH. Empire also failed to establish in its pleadings or attachments that Student disclosed confidential settlement communications.

Finally, Student is permitted to revoke consent for special education. (34 C.F.R. § 300.300(b)(4).) Empire failed to show how Student's revocation prior to the hearing was done in bad faith, frivolous, or intended to cause unnecessary delay of the proceedings. Rather, Student's revocation permitted Empire to withdraw its complaint prior to incurring costs for attending the hearing. For the foregoing reasons, Empire's motion for sanctions is denied.

Student has revoked consent for special education and related services and Empire has withdrawn its complaint. Accordingly, OAH has no further jurisdiction over this matter and the case is dismissed.

ORDER

1. Empire's request for sanctions is denied.

2. This matter is dismissed. All hearing dates are vacated.

DATE: April 4, 2019

DocuSigned by:
Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings