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. 2016120880 ORDER DENYING WITHOUT PREJUDICE STUDENT'S CLAIMS FOR RELIEF; DENYING REQUEST FOR DOCUMENTS; AND DENYING REQUEST FOR SANCTIONS

District filed a Request for Due Process Hearing and Mediation (complaint) with the Office of Administrative Hearings naming Parents on behalf of Student on December 21, 2016. District's complaint raises a single issue related to the appropriateness of its April/May 2016 initial assessment under the Individuals with Disabilities Education Act.

On January 6, 2017, Parent on Student's behalf, who is unrepresented by counsel in this matter, filed correspondence with OAH requesting documents pertaining to Student's classroom examinations, sanctions against District and a stay order prohibiting District from destroying Student's examination results. Parent's request will be considered a motion for production of documents and sanctions (Motion). On January 9, 2017, Parent filed a Reply to District's complaint in which Student made several allegations against District and requested remedies (Student's Response). District filed a response to Student's Motion and Response on January 11, 2017.

LEGAL AUTHORITY

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

To guarantee parents the ability to make informed decisions about their child's education, the IDEA grants parents of a child with a disability the right to examine all relevant records relating to their child's "identification, evaluation and educational placement." (20 U.S.C. §1415(b)(1).) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected,

maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing, or resolution session. (See 34 C.F.R. §300.613(a).) Parents have the right to receive copies of all school records within five business days after parents make a request. (34 C.F.R. § 300.613(a); Ed. Code, §56504.)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA). (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Education records include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b).)

In certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].)

An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "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." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) "Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

Student's Motion and Response seek several types of relief. First, this matter only involves the single issue of whether District's initial assessment was appropriate under the IDEA. It is a District-filed case which does not entitle Student to a resolution session under 34 Code of Federal Regulations section 300.510(a)(2006), as Student asserts. It also does not entitle Student the right to add additional issues without District's consent, or seek specific remedies for Student's alleged violations of the IDEA against District. The relevant evidence in this case and District's right to relief is based upon the single issue raised in District's complaint. Here, District seeks an order finding its initial assessment was appropriate. As such, Student's requests for relief in his Response associated with Student's

allegations and claims against District are not at issue. If Student wishes to make claims that arise under the IDEA against District and seek associated relief, Student may file his own request for due process with OAH putting those claims at issue. Therefore, Student's requests for relief in his Response are denied without prejudice.

Next, in the Motion, Parent asserts that, after Parents requested educational records, District failed to produce certain classroom examination results pertaining to Student's performance at school. Parents claim District has destroyed certain documents, which may be relevant or necessary to their defense of District's case and in support of their own claims, which as discussed above are not at issue in this case. Parent seeks an order from OAH directing District to stop destroying records and to provide Parents the documents they have requested. Parent's motion does not include a formal request to produce all educational records, as defined under FERPA.

The IDEA and its enabling regulations do not permit pre-hearing discovery. In addition to Parents' rights under FERPA, Education Code section 56505, subdivision (e)(7) limits Student's rights to receive those documents District intends to offer at hearing to a reciprocal exchange of documents five business days before the first day of hearing. Student may also request OAH to issue a properly supported subpoena for documents to be produced on the first day of hearing. OAH does not have jurisdiction to order District to stop destroying records that may be defined as "educational records" under FERPA, which is within the jurisdiction of the California Department of Education. Therefore, Student's request for a "stop order" and an order mandating District to provide all of Student's exam results in District's possession before the statutory time for exchange of documents is denied.

Finally, Student requests sanctions against District and Venado Middle School for not preserving Student's records. Student's sanctions request is unsupported by any relevant authenticated evidence or legal authority that would support OAH's jurisdiction to award sanctions against District. Accordingly, the request for sanctions is denied.

ORDER

1. Student's claims and requests for relief in Student's Response are denied without prejudice to Student's right to file a due process request seeking relief for claims arising under the IDEA.

2. Student's request for a "stop order" compelling District to stop destroying Student's examination results is denied.

3. Student's request for sanctions against District and Venado Middle School is denied.

DATE: January 19, 2017

DocuSigned by:
Adrienne L. Krikorian
3475616B5EDF4C6...

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings