BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040942

ORDER DENYING STUDENT'S REQUEST FOR SANCTIONS

JUNE 16, 2021

On April 20, 2021, Parent on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Santa Monica-Malibu Unified School District., referred to as Santa Monica. The Office of Administrative Hearings is referred to as OAH.

On May 7, 2021, Parent filed a Notice of Unavailability Due to Medical Leave and Time to File Motions and Responses. On May 20, 2021, Santa Monica filed a Motion to Dismiss in Part Claims for Lack of Jurisdiction, referred to as Motion to Dismiss. On June 1, 2021, OAH issued an order granting Santa Monica's Motion to Dismiss Student's claims that did not involve violations of the Individuals with Disabilities Education Act, referred to as the IDEA. In addition, Student's requested remedy for compensatory

damages was stricken in the June 1, 2021 Order, as OAH does not have authority to grant compensatory damages.

On June 4, 2021, Parent on behalf of Student filed a request to vacate the June 1, 2021 Order. The request to vacate the June 1, 2021 Order was treated as a motion for reconsideration. Parent's motion was combined with a Request for Sanctions against Santa Monica on the basis it acted in bad faith in filing the Motion to Dismiss in light of Parent's filing of the Notice of Unavailability. OAH requires that motions be filed separately. Parent is advised that any future motions should be filed as separate pleadings.

APPLICABLE LAW

In certain circumstances, an Administrative Law Judge presiding over a special education proceeding is authorized to 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. (Gov. Code, §11455.30, subd. (a); Cal. Code. Regs., tit. 1, § 1040; Cal. Code Reg., tit. 5, § 3088, subd. (e); 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 order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" include, but are not limited to, making or opposing motions or filing and serving a complaint. (1 CCR § 1040, subd. (a)(1); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the

definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (1 CCR § 1040, subd. (a)(2); 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.)

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. (*Id.* at p. 635.)

A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) Parent cited no authority establishing they had the right to file the Notice of Unavailability and thereby be excused from timely responding to filings and motions for "the next three to four weeks" due to their health condition, nor that such a notice would prevent Santa Monica from filing appropriate motions in accordance with the IDEA and California Education Code. Parent's suggestion that Santa Monica should have delayed the filing of its Motion to Dismiss claims over which OAH does not have jurisdiction violates the IDEA and California Education Code's mandate to promptly resolve due process matters.

Further, Parent's Notice of Unavailability did not relieve Parent of their obligation to respond to motions within three days in accordance with OAH's policy which insures the timely disposition of motions. OAH granted Santa Monica's Motion to Dismiss based on the inclusion of claims outside of OAH's jurisdiction. As a result, Parent cannot objectively establish that Santa Monica's Motion to Dismiss was frivolous.

Parent also did not prove that Santa Monica's motion was filed in bad faith. Monetary sanctions may not be awarded against a party for presenting a claim or defense that is warranted by existing law. (Code Civ. Proc., § 128.5, subd. (f)(1)(D). Parent seeks sanctions against Santa Monica based solely on its act of filing a meritorious Motion to Dismiss after Parent's filing of the May 7, 2021 Notice of Unavailability. Parent's request for sanctions is premised on their mistaken understanding that filing a notice with OAH advising of their poor health condition would delay the due process proceeding. Parent failed to establish that Santa Monica's Motion to Dismiss was for the purpose of harassing Student or Parent, nor that counsel for Santa Monica acted in bad faith, nor can any bad faith be inferred based merely on the filing of a proper motion.

Parent failed to establish that Santa Monica or its counsel engaged in bad faith actions that were frivolous. For these reasons, Student's Request for Sanctions is denied.

ORDER

Student's Request for Sanctions is denied.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings