BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ILEAD HYBRID CHARTER SCHOOL

OAH CASE NUMBER 2020060727

ORDER DENYING MOTION TO DISMISS FOR ALLEGATIONS OUTSIDE OF THE STATUTE OF LIMITATIONS, DENYING MOTION TO DISMISS A PARTY, AND DENYING REQUEST FOR SANCTIONS

AUGUST 20, 2020

On June 22, 2020, Student's Mother and Stepfather, on behalf of Student, filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming iLead Hybrid Charter School. A request for Due Process Hearing will be referred to as a complaint. The Office of Administrative Hearings will be referred to as OAH. Student's Mother and Stepfather will be referred to as Parents, or collectively with Student, as Student.

On July 7, 2020, iLead filed a Notice of Insufficiency with OAH. On July 7, 2020, OAH issued an order finding Student's complaint sufficient.

On August 11, 2020, iLead filed a Motion to Dismiss a Party for Lack of Standing. ILead alleged that Student's stepfather did not have standing to bring the complaint jointly with Student's mother. OAH received no response from Student with respect to the motion to dismiss Stepfather as a party.

On August 11, 2020, iLead also filed a Motion to Dismiss Allegations Outside of the Two-Year Statute of Limitations. On August 14, 2020, Student filed an opposition to the motion to dismiss Student's allegations outside of the statute of limitations, and a request for sanctions against iLead. On August 17, 2020, iLead filed a reply to Student's opposition, and an opposition with respect to Student's request for sanctions.

APPLICABLE LAW

STATUTE OF LIMITATIONS

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Special education laws do not provide procedures for summary judgment or summary adjudication of issues. However, OAH will grant motions to dismiss allegations

that are facially outside of OAH jurisdiction such as claims for violations of civil rights laws or claims against improper parties.

STANDING TO BRING A REQUEST FOR DUE PROCESS HEARING

A student's parent or guardian is entitled to bring a request for a due process hearing. (Ed. Code § 56501, subd. (a).) Under California law, the definition of a parent includes (1) a biological or adoptive parent of a child; (2) a foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code; (4) an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; and (5) a surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code. (Ed. Code. § 56028.) When more than one individual meets the legal definition of a child's parent under Education Code section 56028, a biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

REQUEST FOR SANCTIONS

In a special education due process matter, the Government Code and the California Code of Regulations authorize an Administrative Law Judge to issue sanctions that shift expenses caused by a party acting in bad faith, or using tactics that are

frivolous or solely intended to cause unnecessary delay. Government Code section 11455.30, subdivision (a), provides: "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."

California Code of Regulations, title 1, section 1040, subdivision (a) provides: "The ALJ may order a party, a party's 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." California Code of Regulations, title 1, section 1040, subdivision (a)(2) defines "frivolous" as "totally and completely without merit" or "for the sole purpose of harassing an opposing party." This regulation incorporates the generally accepted grounds for sanctions under Code of Civil Procedure section 128.5. (See *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635-637.) California cases applying section 128.5 hold that a trial judge must state specific circumstances giving rise to the award of expenses and articulate with particularity the basis for finding that the sanctioned party's conduct reflected tactics or actions that were performed in bad faith, were frivolous, designed to harass, or designed to cause unnecessary delay. (*Childs v. Painewebber Inc.* (1994) 29 Cal.App.4th 982, 996; *County of Imperial v. Farmer* (1998) 205 Cal.App.3d 479, 486.) The purpose of the statute is not only to compensate, but it is also a means of controlling burdensome and unnecessary legal tactics. (*On the Cow Hollow Properties* (1990) 222 Cal.App.3d 1577.) There must also be a showing of an improper purpose. An improper purpose may be inferred from the circumstances. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

MOTION TO DISMISS ALLEGATIONS OUTSIDE THE STATUE OF LIMITATIONS

In her complaint of June 22, 2020, Student raises issues against iLead from the beginning of the 2016-2017 school year though the date of filing. While acknowledging the two-year statute of limitations, Student alleges an exception to the statute of limitations in her complaint. Specifically, Student alleges in her complaint that when the Parents approached the school with concerns about Student's anxiety attacks and school refusal, the principal of iLead misrepresented to Parents that homeschooling was the only educational option available for Student rather than evaluating Student for special education and related services. In her opposition to iLead's motion, Student argues that if iLead had complied with its child find duties it would have been required to provide Parents with a copy of their procedural safeguards, and by violating its Child Find duties, iLead correspondingly withheld information about special education evaluations which it was required to provide. In response, iLead argues that it was not legally required to provide Parents with procedural safeguards during the relevant time period, and as such Student has failed to allege a cognizable exception to the statute of limitations.

Student's legal theory that a child find allegation in itself mandates an exception to the two-year statute of limitations is not persuasive. However, Student did allege facts in her Compliant that iLead made specific misrepresentations and withheld information, which Student argues prevented her from requesting a due process hearing at an earlier date. The issues raised in the complaint require findings of fact by the hearing officer at hearing and must be resolved at hearing.

ILEAD'S MOTION TO DISMISS A PARTY FOR LACK OF STANDING

ILead moves to dismiss Student's stepfather as a party in the case, alleging that he does not have standing to file for a Due Process Hearing on behalf of Student. Under Education Code sections 56501 and 56028, a stepparent may file a request for a due process hearing on behalf of a child if such individual adopted the child, or is acting in the place of a biological parent. ILead's motion is not supported by a sworn declaration or documentary evidence proving that Stepfather has not adopted Student or is not acting in the place of Student's biological father. Accordingly, iLead's motion is denied without prejudice.

STUDENT'S REQUEST FOR SANCTIONS

An Administrative Law Judge is authorized to issue sanctions to shift the expenses 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.) Student argues that iLead's Motion to Dismiss Allegations Outside of the Statute of Limitations is frivolous. Although iLead did not prevail on the motion to dismiss, Student has not established bad faith, or tactics that are frivolous or solely intended to cause unnecessary delay. Accordingly, Student's motion for sanctions is denied.

ORDER

1. ILead's Motion to Dismiss Allegations Outside of the State of Limitations is denied.

2. ILead's Motion to Dismiss a Party for Lack of Standing is denied without prejudice.

3. Student's Request for Sanctions against iLead is denied.

IT IS SO ORDERED.

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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings