BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT, GROSSMONT UNION HIGH SCHOOL DISTRICT, and DEHESA SCHOOL DISTRICT.	OAH Case No. 2017100067 ORDER GRANTING DEHESA SCHOOL DISTRICT'S MOTION TO BE DISMISSED AS A PARTY, DENYING WITHOUT PREJUDICE STUDENT'S MOTION TO AMEND THE COMPLAINT, AND DENYING DEHESA'S MOTION FOR SANCTIONS

On September 29, 2017, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming San Diego Unified School District, Mountain Empire Unified School District, and Grossmont Union High School District. On November 7, 2017, OAH granted Student's motion to amend his complaint to add Dehesa School District.

On December 1, 2017, Dehesa filed a motion to dismiss Dehesa as a party to Student's amended complaint, in the alternative reset the timelines, and a motion for sanctions.

On December 4, 2017, Student filed an opposition to Dehesa's motion to be dismissed as a party or in the alternative to replace Dehesa with Diego Hills Charter School. Student also opposed Dehesa's motion for sanctions.

APPLICABLE LAW

Dismissal of a Party

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Statewide benefit charter schools are treated as a school district for all purposes. (Cal. Code Regs., tit. 5, § 11967.6, subd. (c).) Statewide benefit charter schools are their own local educational agencies for purposes of special education and related services. (Ed. Code, §§ 47641, subd. (a) & 56026.3)

Amended Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Sanctions

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 the Office of Administrative Hearings. (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."].)

The ALJ may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).)

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).) 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" 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).) 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. (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

Dismissing Dehesa as a Party

Dehesa argues in its motion to dismiss that although it authorized Diego Hills Charter School, Diego Hills is its own local education agency and is responsible for all special education services. In support of this argument Dehesa filed a declaration of Connie Petit, who advises Diego Hills Charter School on special education matters, and a letter from El Dorado County Charter Special Education Local Plan Area. Both documents confirm Dehesa's argument that Diego Hills Charter School is its own local education agency responsible for special education services.

Student does not allege he ever attended school in Dehesa, received special education services from Dehesa, or resided within Dehesa's boundaries. Rather Student alleges Dehesa authorized the charter for Diego Hills Charter School and is therefore the local education agency responsible for its special education services. Student admits that Diego Hills Charter School appears to meet the requirements to be its own local education agency, but argues that Dehesa also meets the requirements to be a local education agency responsible for Diego Hills Charter School. Student argues that the memorandum of understanding between Dehesa and Diego Hills Charter School that Dehesa provided Student was not sufficient to prove Diego Hills Charter is its own local education agency, but after receiving the letter from El Dorado County Charter Special Education Local Plan Area Student agreed to dismiss Dehesa as a party.

Dehesa's motion to be dismissed as a party is granted. Dehesa proved it is not the local education agency responsible for Diego Hills Charter School, and Student did not allege any other facts that would make Dehesa responsible for providing Student a free appropriate public education.

Motion to Amend

Student's motion was timely, however, Student did not file a proposed second amended complaint referenced as exhibit "V" in the declaration of Patricia Lewis.[1]

The motion to amend the complaint is denied without prejudice to timely refiling the motion to amend with the referenced declaration and a proposed amended complaint.

Sanctions

Dehesa argues Student engaged in frivolous and bad faith tactics designed to cause delay by failing to timely serve an official copy of Student's amended complaint on Dehesa,

[1] OAH did not receive exhibits "J" though "V" and instead received exhibits "A" thought "I" twice.

conducting an inadequate investigation to determine if Dehesa was a proper party, and conditioning dismissing Dehesa on both Dehesa and Student agreeing to pay their own costs. Student asserts his only motive was to determine the entity responsible for providing special education services.

Dehesa failed to show Student engaged in frivolous or bad faith tactics. Student filed a motion to amend his complaint on October 27, 2017, and provided Dehesa with a courtesy copy of said motion and proposed amended complaint at that time. Moreover, filing a complaint without serving it is specifically listed as not a frivolous action or delay tactic. Dehesa authorized Diego Hills Charter school therefore it is not unreasonable for Student to assume that Dehesa is also the local education agency. When Student received documentation showing that Diego Hills Charter School was in fact its own local education agency Student was prepared to dismiss Dehesa as a party. Although Student asked Dehesa to agree to pay its own costs before dismissing it as a party, Dehesa did not show that this was in bad faith as previous to that Dehesa told Student it would seek costs if it was not dismissed as a party. For these reasons, Dehesa's motion for sanctions is denied.

ORDER

1. Dehesa's Motion to be Dismiss as a Party is granted. Dehesa is dismissed as a party in the above-entitled matter.

2. The motion to amend the complaint is denied without prejudice to timely refile the motion to amend with the referenced declaration and a proposed amended complaint.

3. Dehesa's Motion for Sanctions is denied.

DATE: December 7, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings