BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019120286

and

HEMET UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020030710

ORDER DENYING MOTION TO DISMISS AND MOTIONS FOR SANCTIONS

APRIL 10, 2020

On December 6, 2019, Student filed a request for a due process hearing naming Hemet, referred to as Student's case. On or around February 27, 2020, Hemet convened an Individualized Education Program, referred to as an IEP, team meeting for Student. At the February 27, 2020, IEP team meeting Hemet offered Student a placement at Bright Futures Academy, a California non-public school. Parents did not agree with the placement offer.

On March 19, 2020, Hemet filed a request for due process hearing naming Student. Hemet is seeking a determination that its February 27, 2020, IEP offered Student a free appropriate public education. Hemet's request shall be referred to as District's Case. On March 20, 2020, Hemet moved to consolidate District's case with Student's Case. On March 27, 2020, Student filed a Motion of Insufficiency, Motion to Dismiss On the Basis of Bad Faith, Lack of Merit, and Harassment, and Motion for Sanctions. On March 30, 2020, Hemet filed an Opposition to Student's motions. On April 1, 2020, Administrative Law Judge Judith Pasewark issued an Order finding Hemet's request sufficient and dismissing Student's Motion to Dismiss and Motion for Sanctions without prejudice.

On April 3, 2020, Student filed a Motion to Dismiss and for Sanctions. Student asserts that the proposed placement at Bright Futures Academy is not appropriate for Student. Student alleges Hemet's proposed placement, and subsequent due process filing, was made for the sole purpose of antagonizing Student's parents.

On April 7, 2020, Hemet filed an Opposition to Student's Motion to Dismiss, and a Motion for Sanctions against Student. Hemet alleges that Student's Motion to Dismiss is seeking summary judgement, which is not proper under special education law. Hemet further alleges that Student's Motions are without merit, warranting sanctions.

STUDENT'S MOTION TO DISMISS

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure. Here, Student's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion to dismiss is denied. All dates currently set in this matter are confirmed.

MOTIONS 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.)

"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.)

Student's Motion for Sanctions against Hemet is denied. A school district is required to initiate a request for a due process hearing when a parent does not consent to a component of an IEP that the school district believes is necessary to provide the student with a free appropriate public education. (Ed. Code § 56346, subd. (f); *I.R. v.*

Los Angeles Unified School Dist. (9th Cir. 2015) 805 F.3d 1164.) Parent did not consent to Hemet's proposed placement offered in the February 27, 2020 IEP. Hemet's request for due process is proper under the law.

Hemet's Motion for Sanctions against Student is denied. Although Student did not prevail in her Motion to Dismiss or Motion for Sanctions, Hemet did not establish bad faith, or tactics that are frivolous or solely intended to cause unnecessary delay.

ORDER

1. Student's Motion to Dismiss is denied.
2. Student's Motion for Sanctions is denied.
3. Hemet's Motion for Sanctions is denied.

IT IS SO ORDERED.

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Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings