BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ROCKLIN UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020020954

ORDER GRANTING MOTION TO DISMISS FOR RESIDENCY AND DENYING MOTION FOR SANCTIONS

MAY 06, 2020

On February 24, 2020, Rocklin Unified School District filed a Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, naming Parent on behalf of Student.

On April 28, 2020, Student filed a Motion to Dismiss based upon Student not being a resident of Rocklin. On May 1, 2020, Rocklin filed a non-opposition to Student's motion. In the non-opposition, Rocklin acknowledged Student was not a resident and received Student's notice of non-residency on April 15, 2020. Rocklin failed to withdraw its complaint following the notice.

On May 4, 2020, Rocklin filed a request for sanctions against Student. Rocklin complains that Student unnecessarily delayed litigation for this matter by failing to timely inform Rocklin of Student's intent to move out of Rocklin. Rocklin argues that Parent sold the family home on January 27, 2020, and rented an apartment in Rocklin. On March 6, 2020, Parent purchased a home outside of Rocklin. Parent and Student resided at the apartment in Rocklin through April 15, 2020, at which time they moved to the home outside of Rocklin. Parent provided Rocklin written notice that Student no longer resided in Rocklin on April 15, 2020, and Rocklin confirmed receipt of the notice the same day.

Rocklin argues that Parent "had definite certainty" of leaving the school district on March 6, 2020, and therefore acted in bad faith following March 6, 2020, by agreeing to continue this matter and to dates for hearing and mediation. Rocklin asserts this conduct unnecessarily increased Rocklin's legal fees and requests an order from OAH to shift its legal costs to Student.

APPLICABLE LAW

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the Individuals with Disabilities Education Act or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

In certain circumstances, an administrative law judge, known as the ALJ, 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."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing 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) &; 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).)

DISCUSSION

In the present matter, there is no question that Student is not a resident of Rocklin. Rocklin's sole issue for this matter, whether its individualized education program, called IEP, of May 21, 2019, as amended on October 28, 2019, was appropriate such that Rocklin may implement the IEP without Parent's consent, is therefore moot as

Rocklin is no longer Student's local educational agency. Consequently, Student's motion to dismiss for lack of residency is granted.

Rocklin's motion for sanctions fails because the facts described herein do not constitute bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Regardless whether Parent owned a house or rented an apartment in Rocklin, Student was a resident of Rocklin until April 15, 2020. Rocklin therefore remained obligated to provide Student a free appropriate public education until that date. Upon leaving Rocklin on April 15, 2020, Parent provided timely notice that Student no longer resided in Rocklin. Rocklin failed to withdraw its complaint at that time, thereby unnecessarily increasing its legal costs for this matter. Regardless, Rocklin failed to show that Student's conduct prejudiced Rocklin or interfered with the ALJ's ability to ensure an orderly and fair hearing. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) Consequently, Rocklin's request for sanctions is denied.

ORDER

1. Student's Motion to Dismiss is granted. The matter is dismissed.

2. Rocklin's Motion for Sanctions is denied.

IT IS SO ORDERED.

DocuSigned by:
Paul Kamoroff
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Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings