BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2020070468

ORDER GRANTING MOTION TO DISMISS BASED UPON SETTLEMENT AGREEMENT AND DENYING REQUEST FOR SANCTIONS

AUGUST 14, 2020

On July 13, 2020, Parent on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Jose Unified School District. The Request for Due Process is referred to as a Complaint. The Office of Administrative Hearings is referred to as OAH.

On August 10, 2020, San Jose filed a Motion to Dismiss and Request for Sanctions. On August 13, 2020, Student filed an opposition. On August 14, 2020, San Jose filed a reply to Student's opposition and a renewed request for sanctions.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (Id. at p. 686.)

When a party files a due process case based on claims that were waived as part of a settlement agreement, OAH will dismiss the case. (See, e.g., *Student v. Los Angeles Unified School District* (October 26, 2011) OAH Case Number 2011091067; *Capistrano Unified School District v. Student* (June 29, 2011) OAH Case Number 2011060748.)

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

On August 21, 2019, Student filed a request for due process hearing naming San Jose, which OAH designated Case Number 2019080756. On November 21, 2019, Student and San Jose entered into a settlement agreement to resolve OAH Case Number 2019080756, which will be referred to as the Agreement. In the Agreement the

parties agreed to resolve all education and related claims through the start of the 2020-2021 school year. The Agreement specifies: "The term of this Agreement is through the start of the 2020-2021 school year."

The parties agreed that Student would not attend school or receive any services from San Jose through the term of the Agreement. Instead, San Jose agreed to reimburse Student up to $22,500.00 for private school kindergarten tuition and aide support procured by Student from June 1, 2019 through the end of extended school year 2020. The Agreement states: "Parties hereto agree to meet in an IEP meeting prior to the expiration of the term of this Agreement for the purpose of making Student an offer of FAPE to be effective upon the expiration of the term of this Agreement."

The Parties also agreed to waive all claims, known and unknown, arising from or related to the Student's education in and with San Jose through the term of the agreement:

> "Parents and Student hereby waive and fully release District, its predecessors and successors in interest, heirs, assigns, officers, directors, attorneys, agents, employees, partners, contractors, and trustees from all rights, claims and actions, including but not limited to rights, claims, actions arising under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and 42 U.S.C. § 1983, or any causes of action incidental thereto, the Parents and Student may have against District and the above-mentioned predecessors and successors, etc., arising from or related to the Student's education in and with District, to date and through the term of this Agreement."

The Agreement does not carve out any exceptions to the waiver with respect to the IEP team meeting and offer of FAPE that the parties anticipated would be completed within the term of the Agreement.

On May 12, 2020, San Jose convened an IEP team meeting to discuss Student's placement for the 2020-2021 school year. San Jose offered Student a 60-day diagnostic placement in a general education first-grade class, with an aide. Parents did not agree with the May 12, 2020, offer because they wanted Student to repeat kindergarten and were concerned that San Jose could change Student's placement after 60 days.

On June 16, 2020, the parties met for another IEP team meeting. At this meeting San Jose offered Student a 60-day diagnostic placement in a general education kindergarten class. Parents consented to the IEP but continued to object to the offer of a 60-day diagnostic placement.

On July 13, 2020, Student filed a request for a due process hearing naming San Jose. Student raised one issue in his complaint: "Does the District's offer of a sixty-day 'diagnostic placement' in lieu of a completed and finalized IEP deprive Student of a FAPE?"

On July 15, 2020, San Jose changed its offer of placement to Student in accordance with Parent's desire that the kindergarten placement be permanent rather than a 60-day diagnostic placement. On July 15, 2020, Parents signed their consent to the entirety of the IEP.

On August 8, 2020, San Jose filed a Motion to Dismiss Student's Complaint and a request for sanctions. San Jose asserts that Student's claims are not ripe, because per the Agreement, Student's proposed placement was not effective until the expiration of the Agreement. San Jose points out that the Agreement includes a waiver of claims

through the beginning of the 2020-2021 school year. San Jose also argues that there is no existing controversy between the parties, as Student agreed to the IEP on July 15, 2020. A copy of the settlement agreement is attached to San Jose's Motion to Dismiss.

Student acknowledges that the parties entered a final settlement agreement on November 21, 2019. Student also acknowledges that Parents agreed to San Jose's IEP of July 15, 2020, and that Student began the school year in his new placement. While describing the outcome as a "happy ending" for Student, Student argues the issue in the Complaint was not fully resolved because Parents incurred attorneys' fees. Student argues the Complaint should not be dismissed because Student would like the opportunity to litigate the matter so that Parents may recover their attorneys' fees if they are the prevailing party. Student argues that San Jose violated Student's rights between May 12, 2020, and July 15, 2020, be offering only a 60-day diagnostic placement for the 2020-2021 school year rather than an annual placement.

San Jose's Motion to Dismiss is granted. Student is raising an issue that occurred between May 12, 2020, and July 15, 2020, which is covered under the plain language of the waiver in the settlement agreement. Student waived all claims, known and unknown, arising from or related to the Student's education in and with San Jose through the beginning of the 2020-2021 school year. The Agreement does not include any exceptions to this waiver for the IEP process to decide Student's placement for the 2020-2021 school year. The parties agreed that Student's placement would not become effective until the expiration of the term of the Agreement. Student waived the right to bring a claim relating to an offer made during the term of the Agreement, which was never made effective or implemented.

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.) San Jose argues that Student should have dismissed his Complaint after Parents signed the July 15, 2020, IEP. On July 16 and 22, 2020, San Jose asked Student to voluntarily dismiss the Complaint, but Student refused. Student argues that Parents are exercising their rights under the IDEA to continue their litigation so that Parents may recover their attorneys' fees. Although Student's arguments fail on the Motion to Dismiss, San Jose has not established bad faith, or tactics that are frivolous or solely intended to cause unnecessary delay. Accordingly, its motions for sanctions are denied.

ORDER

1. San Jose's motion to dismiss is granted and OAH Case Number 2020070468 is dismissed.
2. San Jose's request for sanctions is denied.

IT IS SO ORDERED.

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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings