BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013100280 ORDER DENYING DISTRICT'S MOTION TO SHIFT EXPENSES AND DISMISSING COMPLAINT IN OAH CASE NO. 2013100280

On October 3, 2013, Student filed a request for a due process hearing and mediation, naming Hacienda La Puente Unified School District (District). District filed a notice of insufficiency (NOI) on October 23, 2013. On October 24, 2013, OAH issued an order granting District's NOI, with fourteen days leave to amend. District filed a motion to shift expenses on November 4, 2013, which was supported by unauthenticated exhibits, and a declaration regarding fees from District's attorney. The deadline of November 7, 2013 for Student's amended complaint passed and Student did not file an amended complaint. Student filed an opposition to District's motion to shift costs on November 10, 2013, and both District and Student filed reply briefs. For the reasons discussed below, the motion is denied and this matter is dismissed.

APPLICABLE LAW

Government Code section 11455.30 provides:

(a) 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.

(b) The order, or denial of an order, is subject to judicial review in the same manner as a decision in the proceeding. The order is enforceable in the same manner as a money judgment or by the contempt sanction.

California Code of Regulations, title 1, section 1040, provides:

(a) 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.

(1) 'Actions or tactics' include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order of the ALJ.

(2) 'Frivolous' means

(A) totally and completely without merit or

(B) for the sole purpose of harassing an opposing party.

(b) The ALJ shall not impose sanctions without providing notice and an opportunity to be heard.

(c) The ALJ shall determine the reasonable expenses based upon testimony under oath or a Declaration setting forth specific expenses incurred as a result of the bad faith conduct. An order for sanctions may be made on the record or in writing, setting forth the factual findings on which the sanctions are based.

ANALYSIS AND ORDER

District contends that Student should pay $1905 in attorney fees associated with Student's instant complaint and its motion to shift fees. District argues that Student, through his attorney, has filed three complaints involving nearly similar facts, all of which have been deemed insufficiently pleaded by OAH. The first case was assigned OAH case number 2013051120, and was dismissed pursuant to an Order granting Student's NOI on June 7, 2013. The second case was assigned OAH Case No. 2013070791 and was dismissed pursuant to an Order granting District's NOI on September 30, 2013. Student filed the instant action on October 3, 2013, which District's alleges was never served on it by Student. District filed an NOI on October 23, 2013, which was granted with leave to amend on October 24, 2013. District argues that, because it was forced to respond to each of the first two complaints by filing a successful NOI, the complaints were frivolous and therefore District should be compensated in the form of its attorneys' fees for having to respond to a third similar complaint was found insufficient.

On the other hand, Student's attorney has offered a declaration under penalty of perjury explaining the chronology of Student's 2013 claims against the District, and refuting District's argument that the facts were identical in each of the three complaints. He also contends that, because Student's claims asserted in the complaint in this matter were recently resolved without the need to file an amended complaint, District's contention that the instant matter was frivolous is not meritorious.

While Student's attorney does not refute that he made three unsuccessful attempts to plead an appropriate claim against District over a period of six months, District has not met its burden of establishing that this complaint in this matter was "totally and completely without merit" or "for the sole purpose of harassing" District. On the contrary, both attorneys acknowledge that District and Student ultimately resolved their dispute, making an amended complaint in this matter unnecessary.

However, notwithstanding the preceding, Student's attorney, who is not inexperienced in the field of special education law, and Parents are strongly cautioned that if Student should file another complaint raising the same issues in this or the prior two cases, OAH may issue an Order to Show Cause re: Sanctions upon proper motion by the District if the complaint is found to be insufficient a fourth time.

ORDER

1. District's motion to shift expenses is denied.

2. Pursuant to OAH's Order granting District's Notice of Insufficiency on October 24, 2013, Student's Case No. 2013100280 is dismissed effective the date of this Order.

3. All dates in this matter are vacated.

Dated: November 22, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings