BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. FOUNTAIN VALLEY SCHOOL DISTRICT AND KINETIC ACADEMY.	OAH Case No. 2018040670 ORDER GRANTING MOTION TO DISMISS ISSUES FIVE AND SIX; DENYING MOTION FOR SANCTIONS

On May 30, 2018, Kinetic Academy filed with the Office of Administrative Hearings a motion to dismiss portions of Student's complaint and for sanctions. On June 1, 2018, Parents on behalf of Student filed a non-opposition to the motion to dismiss and an opposition to the request for sanctions.

APPLICABLE LAW

Motion to Dismiss

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C.§ 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), and state civil rights laws.

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction

(e.g., civil rights claims, section 504 claims, incorrect parties, etc.).

Motion for 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."].) 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) & (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

Here, Kinetic Academy correctly asserts that Student's complaint includes claims outside of OAH's jurisdiction. Specifically, Student's issues five and six raises section 504 claims that are facially outside of OAH's jurisdiction. Student does not oppose Kinetic Academy's request to dismiss those portions of Student's complaint. In accord with the above authority, Kinetic Academy's request to dismiss Student's issues five and six is granted.

In addition, Kinetic Academy points out that Student was informed by OAH in a prior matter, and by Kinetic Academy in the present case, that such claims are not within OAH's jurisdiction. Consequently, Kinetic Academy asserts that Student's conduct of including the issues in his complaint was frivolous and caused Kinetic Academy to incur expenses related to its motion to dismiss. For those reasons, Kinetic Academy requests monetary sanctions against Student.

In his opposition, Student contends that it was necessary to include issues five and six in his complaint to exhaust his administrative remedies, a prerequisite before Student may assert those claims in state or federal court. OAH's dismissal of the issues meets the exhaustion requirement.

Student's conduct does not qualify as frivolous. Student's conduct had merit and was not done for the sole purpose of harassing Kinetic Academy. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).)[1]

Finally, only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) The ALJ declines to do so because the facts described herein do not rise to the level of bad faith or frivolous conduct and sanctions are not necessary to ensure an orderly and fair hearing. Consequently, Kinetic Academy's motion for sanctions is denied.

ORDER

1. Kinetic Academy's motion to dismiss issues five and six is granted. The hearing will proceed on the scheduled dates as to the remaining issues.

2. Kinetic Academy's motion for sanctions is denied.

DATE: June 8, 2018

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Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

[1] It is common practice for a student to raise a section 504 claim in an OAH complaint to exhaust his/her administrative remedies; and for the local educational agency to wait until the prehearing conference statement to request that OAH dismiss the claim during the prehearing conference, thereby adding no additional cost to the local educational agency.