BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: JULIAN UNION SCHOOL DISTRICT AND HARBOR SPRINGS CHARTER SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017030050 ORDER DENYING RESPONDENT'S MOTION TO DENY PETITIONER'S MOTION TO DISMISS AND ATTORNEY'S FEES

On March 1, 2017, District filed a request for due process (complaint) with the Office of Administrative Hearings naming Parent on behalf of student. On March 20, 2017, OAH held a prehearing conference with both parties. On March 22, 2017, Julian Union School District and Harbor Springs Charter School filed a notice of withdrawal without prejudice. On March 22, 2017, Student filed a motion to deny Petitioner's motion to dismiss and a request for attorney's fees. Julian and Harbor Springs did not file a response.

APPLICABLE LAW

Dismissal

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints be it before, during, or after the commencement of a due process hearing. However, Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.[1] Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff's request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice.

[1] All further statutory references are to the Code of Civil Procedure unless otherwise noted.

Fees

In a special education due process matter, an Administrative Law Judge has the authority to award attorneys' fees under the Government Code and the California Code of Regulations. 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.

Government Code section 11455.30 is implemented by California Code of Regulations, title 1, section 1040, which 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.

Whether an action is frivolous is governed by an objective standard: whether any reasonable attorney would agree it is totally and completely without merit. There must also

be a showing of an improper purpose; i.e., subjective bad faith on the part of the attorney or party to be sanctioned. An improper purpose may be inferred from the circumstances. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

While the timing of Julian and Harbor Springs's dismissal may be suspect, Student has not provided any law stating Julian and Harbor Springs cannot dismiss a complaint they filed. Student relies on *Rocklin Unified School District v. Student* (Oct. 15, 2014) Cal.Offc.Admin.Hrngs. Case No. 2014070464 (Order denying dismissal without prejudice). However, prior OAH orders are persuasive, not binding. (Cal. Code Regs., tit. 5, § 3085.) Additionally, unlike the case Student cites, the due process hearing in this matter had not yet started before Julian and Harbor Springs dismissed their complaint. Although Student is correct that once a request for an independent educational evaluation is made a school district is required to either fund the evaluation or file for due process, prior to the commencement of the due process proceedings a school district is able to dismiss their complaint.[2] Student would be in the same position he is in now had Julian and Harbor Springs chose not to respond to the request for an independent educational evaluation.

Moreover, Student has not established Julian and Harbor Springs dismissed the complaint in bad faith or amounted to tactics that were frivolous or solely intended to cause unnecessary delay to the other party and/or their attorneys. Unfortunately, late dismissal of cases going to hearing is one of the hazards of litigation. Student's request for fees is denied because there is no evidence that the complaint was unmeritorious or was filed for the sole purpose of harassing Student. Accordingly, Student's Motion is denied.

---

[2] Nothing in this order precludes Student from filing his own complaint alleging District failed to either fund or file after a request for an independent educational evaluation was made.

ORDER

1) Student's Motion to Deny Julian and Harbor Springs's Motion to Dismiss is denied.

2) Student's Motion for Attorney's Fees is denied.

DATE: March 24, 2017

DocuSigned by:
Linda Johnson
5092A923415448...

LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings