BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT AND STUDENT,	OAH CASE NO. 2013030058
v.	ORDER DENYING MOTION FOR SANCTIONS
SANTA ROSA CITY SCHOOLS AND WEST SONOMA COUNTY UNION HIGH SCHOOL DISTRICT.	

On June 24, 2013, Santa Rosa City Schools (SRCS) and the West Sonoma County Union High School District (WSCUHSD) (hereinafter the Districts), through their attorney Carl C. Corbin, filed with the Office of Administrative Hearings (OAH) a motion to impose sanctions on Student. OAH has not received a response from Student.

APPLICABLE LAW

In a special education due process matter, an Administrative Law Judge (ALJ) 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.

That section 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.

A comprehensive discussion of the grounds for sanctions under Code of Civil Procedure section 128.5 is set forth in *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635-637. A trial court may impose sanctions under Code of Civil Procedure section 128.5 against a party, a party's attorney, or both, for "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." A bad faith action or tactic is frivolous if it is "totally and completely without merit" or if it is instituted "for the sole purpose of harassing an opposing party." (*Id.*, subd. (b)(2).) 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

The Districts' move for sanctions against Student personally is based on several written communications Student filed with OAH between June 14 and June 20, 2013. These communications were filed by Student personally[1] even though Student is represented by attorney Peter Sturges.[2] The Districts contend that these documents demonstrate the

[1] Student is 19 years of age and holds his own educational rights.

[2] On July 1, 2013, Mr. Sturges filed a motion to withdraw as counsel for Student and Parent. OAH is deferring ruling on the motion for the required three business days in order to give Student and Parent an opportunity to respond.

following misconduct by Student: 1) failure to serve on the Districts copies of documents filed with OAH, or failure to serve them in a timely fashion (i.e., at the same time they are filed); 2) failure to address questions contained in OAH orders; 3) and the use of highly offensive language in documents containing harsh personal attacks on the Superintendent of WSCUHSD and upon counsel for the Districts.

The Districts' concern about Student's conduct is understandable. However, their motion does not adequately demonstrate that Student's actions were frivolous, undertaken in bad faith or for an improper purpose, or solely for the purpose of delay. Student's failure to timely serve on the Districts copies of documents filed with OAH appears to have stemmed from a mistaken belief that he only had to do so within 5 days of filing, rather than simultaneously as the law requires. Student appears to have learned the applicable rule; he filed another pleading on June 24, 2013, and served it simultaneously.

Student also appears not to know that as long as he is represented by counsel he should not separately file papers with OAH, but should direct all communications through his counsel.

Student's failure to address questions posed in an OAH order may have stemmed from a lack of knowledge of how to frame an appropriate response, or even from an assumption that Mr. Sturges would be filing a response. The documents recently filed in this matter by Student, Parent and Mr. Sturges show that the status of the representation of Student and Parent is confused and in flux.

It is true that Student has filed documents with OAH that contain obscenities and highly offensive personal attacks on the Superintendent and on counsel for the Districts. On this occasion only, OAH will give Student the benefit of the doubt, and assume that he has done so out of ignorance of proper decorum in legal proceedings.

However, Student is admonished as follows:

1. Any further filing of documents directly with OAH while Student is represented by counsel is improper. Such documents will be subject to being stricken from the file, and may be subject to sanctions imposed on Student. Student may or may not be representing himself in the future, but as long as he is represented by counsel he may communicate with OAH only through counsel.

2. The filing of documents with OAH containing obscenities or highly inflammatory personal attacks on the parties, their officers or employees, or on counsel, is

wholly inappropriate and will not be tolerated. Any further such filings by Student may be subject to monetary or other sanctions.

The District's motion for sanctions is denied.

Dated: July 5, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings