BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2018020681
v.	ORDER GRANTING STUDENT'S REQUEST FOR DISMISSAL; DENYING RESPONDENT SCOE'S MOTION TO DISMISS; AND DENYING RESPONDENT SCOE'S REQUEST FOR SANCTIONS
BUTTE VALLEY UNIFIED SCHOOL DISTRICT AND SISKIYOU COUNTY OFFICE OF EDUCATION.	

On February 15, 2018, Parents on behalf of Student filed a request for expedited due process hearing (complaint) seeking, in part, the funding of Student's placement in an appropriate residential treatment program mutually agreeable to all parties. The complaint listed several of Parents' preferred placement options, including Monarch Center for Autism, in Ohio. On February 26, 2018, the parties entered into an amended settlement agreement placing Student at Monarch Center for Autism (amended settlement agreement), which amended a prior settlement agreement entered into by the parties on December 21, 2017 (settlement agreement).[1]

On February 27, 2018, Respondent Siskiyou County Office of Education (SCOE) filed a motion to dismiss the complaint and requested sanctions against Student's attorney. On February 28, 2018, Student submitted a request that the Office of Administrative Hearings (OAH) dismiss the matter with prejudice, as the parties reached a settlement of their dispute. Also, on February 28, 2018, Student filed an opposition to Respondent's request for sanctions. No response was received by Butte Valley Unified School District as to Respondent's or Student's motions.

Respondent asserts that sanctions are warranted based upon Student's filing of multiple, similar complaints with the California Department of Education (CDE) and OAH regarding the same issue, which was waived and released in the settlement agreement. Respondent further asserts that the settlement agreement contained a covenant not to sue, which Student violated by filing complaints with OAH and CDE. In addition, Respondent argues that Student's filing of multiple complaints caused Respondent to expend significant time and public resources to respond to the complaints and attempt to resolve the matter, and infringed on the parties' ability to resolve their dispute collaboratively.

[1] Parents previously filed requests for hearing on behalf of Student with the Office of Administrative Hearings, in case numbers 2017110885, 2018020378, and 2018020477.

On February 28, 2018, Respondent filed a response to Student's request to dismiss and reiterated its motion for sanctions, arguing that Student's dismissal request should be denied because the parties have not resolved the dispute at issue in this matter. On March 1, 2018, Student filed a reply to Respondent's response. Student filed an amended reply on the following day.

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); see also Ed. Code, § 56501, subd. (a).) 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.)

In a special education due process matter, the Government Code and the California Code of Regulations authorize an Administrative Law Judge to order sanctions for a party's bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (Gov. Code § 11455.30; Cal. Code. Regs., tit. 5, § 3088, subd. (a); Code Civ. Proc. § 128.5.) Section 128.5 of the Code of Civil Procedures defines "actions or tactics" as including, but not limited to, making or opposing of motions or the filing and service of a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) The same section defines "frivolous" as meaning totally and completely without merit or for the sole purpose of harassing an opposing party. (Code Civ. Proc., § 128.5, subd. (b)(2).) 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 attorney's fees." (Gov. Code, § 11455.30, subd. (a); see also Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e) ("Provisions for contempt sanctions, order to show cause, and expenses contained in Government Code sections . . . 11455.30 of the APA apply to special education due process hearing procedures . . . .")

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, 484–486.)

The California Court of Appeal discussed what is required to impose sanctions under California Code of Civil Procedure section 128.5 in the case of *Levy v. Blum* (2001) 92 Cal.App.4th 625. In acknowledging that a bad faith action or tactic must be frivolous or solely intended to cause unnecessary delay, the court explained that an objective standard applies, meaning any reasonable attorney would agree it is totally and completely without merit. (*Id*. at 635.) There must also be a showing of an improper purpose, such as subjective bad faith on the part of the attorney or party to be sanctioned. (*Ibid.*)

DISCUSSION

Student's Request for Dismissal

It is clear from the motions and responses filed by the parties that there has been a total breakdown of communication by the parties. Nonetheless, the parties entered into an amended settlement agreement that Student represents settles the dispute raised by Student in the instant matter. More specifically, the parties entered into an amended settlement agreement as to the placement of Student after the complaint was filed, among other things. Although it is possible that the settlement was not directly related to the filing of the complaint, the settlement had the effect of resolving the dispute identified in the complaint.[2] Since Student is the filing party, great weight is given to Student's representation that the dispute has been resolved. Accordingly, good cause has been shown to dismiss this matter, and it is so dismissed.

Respondent SCOE's Motion to Dismiss

Since the matter is dismissed pursuant to Student's request for dismissal, Respondent's motion to dismiss is denied as moot.

Respondent SCOE's Motion for Sanctions

Parents filed three previous complaints in OAH case numbers 2017110885, 2018020378, and 2018020477. The first request for hearing filed in OAH case number 2017110885 resulted in the settlement agreement and resolved the issues raised in the underlying request for hearing. Student then filed two additional complaints, in OAH case numbers 2018020378 and 2018020477, which were rejected by OAH. Student filed the complaint in the instant matter and alleged that he was denied a free appropriate public education for the 2017-2018 school year, including the 2018 extended school year, beginning after he arrived at a placement pursuant to the parties' prior settlement agreement. Student's FAPE denial claim is based, in part, on allegations that the placement was not appropriate.

Student has a right to present complaints against Respondent with respect to his educational placement and the provision of a FAPE. In addition, both cases that went forward resulted in a settlement agreement. Moreover, Student's attorney's conduct of sending the same letter multiple times in a short period of time and sending less than friendly email messages to Respondent's counsel, while frustrating, does not rise to the level of sanctionable conduct at this time.

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[2] Respondent argues that Student's filing of the complaints was frivolous, and then later states the amended settlement agreement did not resolve this matter. These arguments cannot be reconciled, as it appears Respondent is conceding there is some merit to the issues raised in the complaint.

While there has been a showing of unnecessary and counter-productive hostility between the parties' attorneys, Respondent has not provided sufficient evidence that Student's attorney acted in bad faith, has used actions or tactics that are frivolous or solely intended to cause unnecessary delay or harassment, or for an improper purpose. It does not appear that Student's attorney's conduct was totally and completely without merit or for the sole purpose of harassing an opposing party.

It appears that much of the dispute relating to Respondent's motion for sanctions could have been resolved through meaningful communication between the parties to avoid the significant time and public resources that Respondent indicates were expended as a result of the actions of both parties. The parties are well advised that the litigious tactics being used against one another in connection with the underlying motions may not fare well in fostering the continued relationship that will inevitably exist in light of the parties' interest in Student's education.

ORDER

1. Parents' request for dismissal is GRANTED, and OAH Case No. 2018020681 is dismissed. All dates are hereby vacated.

2. Respondent SCOE's motion to dismiss is DENIED as moot.

3. Respondent SCOE's request for sanctions is DENIED.

IT IS SO ORDERED.

DATE: March 5, 2018

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings