BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ETIWANDA SCHOOL DISTRICT.	OAH Case No. 2019040749 ORDER DENYING MOTION TO DISMISS AND DENYING MOTION FOR SANCTIONS

On April 18, 2019, Parent, on behalf of Student, (Student) filed a Request for Due Process Hearing (complaint) naming Etiwanda School District as respondent. On May 2, 2019, Etiwanda filed a motion to dismiss the complaint, with supporting declarations, asserting that the issues stated therein were not ripe for adjudication. On May 7, 2019, Student filed an opposition to the motion to dismiss and a motion for sanctions against Etiwanda, both with supporting declarations, for filing a motion that was frivolous, in bad faith and for the purposes of harassing Student. On May 10, 2019, Etiwanda filed a reply to Student's opposition to the motion to dismiss and opposition to the request for sanctions with supporting declarations.

Motion to Dismiss

Etiwanda asserts that the complaint herein is not ripe for adjudication because Etiwanda had not had an opportunity to present its independent educational program offer to Student for the 2019-2020 school year. In her declaration, Etiwanda's special education director asserts that Etiwanda had just disclosed its proposal in anticipation of further discussion with Parent's advocate abruptly terminated the meeting, cutting off discussion. Etiwanda further asserts that, despite repeated attempts to reconnect with Parent and her advocate, they were unable to reconvene the meeting on April 16, 2019. In a declaration, Student's advocate states that the meeting had reached an impasse after verbal presentation of Etiwanda's offer of FAPE and so the call was terminated.

Etiwanda asserts that the settlement agreement between the parties gives the district until June 30, 2019, to convene an IEP team meeting to prepare Student's IEP for the 2019-2020 school year. Etiwanda states that it convened an IEP team meeting on April 16, 2019, that was not completed and that Etiwanda has not yet had an opportunity to meet with Parent to complete the development of Student's IEP.

APPLICABLE LAW

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

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); Ed. Code, § 56501, subd. (a).) Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast,* (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387.] All that is required in a due process hearing complaint is a description of the nature of the problem of the child related to the proposed initiation or change; including facts relating to the problem and a proposed resolution of the problem to the extent known to the party at the time of filing. (Ed. Code §56502(c)(1)(C) and (D); 20 U.S.C. § 1415 (b)(7)(B)(iii).)

OAH only has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement which are resolved through the California Department of Education's compliance complaint procedure. (*Id.* at p. 1030.) OAH does have jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a settlement agreement, as opposed to "merely a breach" of the settlement agreement. (*Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603.)

DISCUSSION

Etiwanda asserts that Student's filing of the complaint regarding the 2019-2020 IEP, prior to completion of the IEP development process, results in this complaint being premature pursuant to the terms of the settlement agreement. However, this is not evident from the face of the pleadings. Student asserts a very different view of the facts leading up to its complaint. This factual dispute would require resolution in order for a determination to be made as to the issues asserted in Etiwanda's motion to dismiss. There are no summary judgment procedures in special education due process hearings.

Student's complaint states a claim that may proceed to hearing. All that is required to state a claim pursuant to the IDEA and related California special education laws is a statement of the "problem" and a "proposed resolution." Here, Student has stated a problem that falls within the jurisdiction of the Special Education Division of OAH. Any disputes of fact regarding the issue raised will be resolved at hearing. Etiwanda's motion to dismiss is denied.

Motion for Sanctions

Accompanying Student's opposition to Etiwanda's motion to dismiss Student's complaint, was a motion for sanctions. Student asserts that the motion to dismiss was frivolous, in bad faith and for the purposes of harassing Student. Student's motion does not state what type of sanctions are being requested; nor does it request an amount for a monetary sanction. Etiwanda opposed the sanctions motion on the grounds that the motion to dismiss was made in good faith, was not intended to harass and further that Student did not comply with the 21-day safe harbor provision of both California Code of Civil Procedure section 128.5, subdivision (f)(1)(B).

APPLICABLE LAW

In certain circumstances, an ALJ is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, § 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner v. Manhattan Beach Unified Sch. Dist*. (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly [Cal. Code Regs., tit. 5] § 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).)

With prior approval from the General Counsel of the California Department of Education, an ALJ 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 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. Cod 11455.30, subd. (a).)

Without first obtaining approval from the California Department of Education, an ALJ 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." (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).) "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.)

An ALJ cannot award monetary sanctions on its own motion without an order to show cause. (California Code of Civil Procedure section 128.5(2)(B).) Prior to seeking a sanction

related to a pleading, the moving party must serve, but not file, the motion for sanctions 21 days prior to the date of filing in order to provide the party against whom sanctions are sought the opportunity to withdraw or amend the pleading in question. (Ca. Code Civ Proc. §128.5 (f)(1)(D.)

DISCUSSION

Etiwanda's motion to dismiss was not frivolous. Etiwanda challenged OAH's jurisdiction to hear the matter based on an agreement in place between the parties which it asserted rendered the adjudication of the dispute premature. However, the moving and opposing papers illustrate a substantial dispute as to the material facts pertaining to the April 16, 2019 IEP team meeting, and their relation to that agreement. While Etiwanda did not prevail on its motion to dismiss, it is not proper to sanction attorneys solely because their attempt to dismiss claims is unsuccessful. Student has failed to establish that the motion wholly lacked merit or was solely intended to harass Student. Student did raise material disputes as to the factual basis for the motion; but the fact that a motion is disputed is not grounds for the imposition of sanctions.

As no basis for sanctions has been established, the issue of Student's failure to specify the sanctions sought will not be addressed here; nor will Student's failure to comply with the safe harbor provisions of state and federal law.

ORDER

1. Etiwanda's Motion to Dismiss is DENIED. All dates currently scheduled in this matter are confirmed.

2. Student's motion for sanctions is DENIED.

IT IS SO ORDERED.

DATE: May 10, 2019

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings