BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017011169
v.	ORDER DENYING DISTRICT'S MOTION FOR MONETARY SANCTIONS
MORGAN HILL UNIFIED SCHOOL DISTRICT.	

On December 22, 2016, Student filed a complaint with the Office of Administrative Hearings, OAH Case No. 2016120908, against District alleging both expedited and non-expedited issues. OAH issued a scheduling order setting the expedited hearing for February 7, 2017.

On January 24, 2017, Student filed a motion to amend his complaint to add new issues and to continue the expedited hearing, based upon records obtained from District on January 19, 2017. On January 25, 2017, District filed a notice of non-opposition to Student's motion to amend.

On January 27, 2017, OAH denied Student's motion to amend, ruling that granting the motion would effectively continue the case and continuances are not authorized under the laws applicable to expedited matters. In a footnote, the Administrative Law Judge noted that nothing prevented Student from dismissing his complaint and filing a new complaint containing all of his issues.

On January 30, 2017, Student dismissed OAH Case No. 2016120908, and filed the instant action.

On February 22, 2017, District filed a motion seeking monetary sanctions against opposing counsel for dismissing Student's first complaint and filing a second complaint, on grounds that Student had no intention to prosecute the first action and the second complaint was brought in bad faith and solely intended to cause unnecessary delay and harass District.

On February 23, 2017, Student filed his opposition to the motion for sanctions.

Oral argument on the motion was heard at a March 6, 2017, Status Conference. As discussed below, the motion is now denied.

APPLICABLE LAW

In a special education due process matter, an ALJ has the authority to award attorneys' fees under the Government Code and the California Code of Regulations. Government Code section 11455.30, subdivision (a), provides:

> 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.

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.

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

Student's complaint contained expedited issues based upon various suspensions resulting in a manifestation determination review meeting. District produced disciplinary records on January 19, 2017, which Student alleges he had not received previously. Based upon the new records, Student's counsel determined that the complaint required additional allegations. Since an expedited case cannot be continued, Student was left with the choice between proceeding on a complaint he did not believe to be complete or withdrawing the first complaint and filing a new complaint.

In response to Student's motion to amend, District filed a non-opposition, asking the OAH to vacate all current dates and set new dates for hearing. In its motion for sanctions, District complains of the delay brought by Student's new filing. The arguments are inconsistent and disingenuous.

The facts show that Student's counsel diligently prosecuted his client's case, in good faith. There is no evidence of intent to harass District, or of any other improper purpose on the part of Student.

Therefore, District's motion for monetary sanctions is denied.

IT IS SO ORDERED.

DATE: March 22, 2017

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COLE DALTON
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Administrative Law Judge
Office of Administrative Hearings