BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030253

ORDER GRANTING MOTION TO DISMISS

ROUND VALLEY INDIAN TRIBES

MAY 15, 2023

On March 8, 2023, Parent on behalf of Student, through their attorney Sheila Bayne, filed a Due Process Hearing Request under the Individuals with Disabilities Education Act, called IDEA, against Elk Grove Unified School District with the Office of Administrative Hearings, called OAH. On March 10, 2023, Student filed a Motion to Amend the Due Process Hearing Request and a proposed amended complaint, and minutes later a document titled a corrected amended complaint. The corrected amended complaint identified both Parent and Round Valley Indian Tribes as the petitioners on Student's behalf. The motion to amend was filed more than five days

prior to the due process hearing. Because it was timely, OAH granted Student's motion to amend on March 17, 2023, under title 20 United States Code section 1415(c)(2)(E)(i).

On April 19, 2023, Elk Grove Unified School District moved to dismiss Round Valley Indian Tribes as a party who lacked standing under the IDEA to bring a complaint on Student's behalf. Beginning on March 13, 2023, Elk Grove had been meeting and conferring with Student's attorney, and attempting to persuade Bayne to voluntarily dismiss Round Valley Indian Tribes because it lacked standing under the IDEA. Elk Grove requested Bayne dismiss Round Valley Indian Tribes to avoid the time and expense Elk Grove would incur to file a motion to dismiss Round Valley Indian Tribes as an improper party in this IDEA case. During this meet and confer process, Bayne explicitly confessed she did not represent Round Valley Indian Tribes, only Parent and Student. Elk Grove additionally asserted in its motion that Round Valley Indian Tribes should be dismissed because Bayne had no authority to file a due process hearing on behalf of a party she did not represent.

Student did not file a written response to Elk Grove's motion to dismiss Round Valley Indian Tribes. Bayne did not appear at the prehearing conference on April 24, 2023, and instead Student was represented by two other attorneys from Bayne's office. Student requested additional time to file a written response to the motion to dismiss Round Valley Indian Tribes. During the prehearing conference, Student, Elk Grove, and the Administrative Law Judge discussed numerous issues regarding Elk Grove's motion and Student's Corrected Amended Complaint including Round Valley Indian Tribes in the administrative law proceeding. The parties stipulated to, and OAH granted, a continuance of the due process hearing and a further briefing schedule to afford Student, Round Valley Indian Tribes, and Elk Grove due process.

On April 28, 2023, Elk Grove again filed its motion to dismiss Round Valley Indian Tribes, updated to include additional information regarding email communications with Bayne to meet and confer about the motion and information necessary to serve Round Valley Indian Tribes by a method authorized by the California Code of Civil Procedure and likely to provide Round Valley Indian Tribes notice and an opportunity to be heard in this administrative law proceeding. Elk Grove again attempted to persuade Bayne to voluntarily dismiss Round Valley Indian Tribes, and sought to reduce the costs for serving Round Valley Indian Tribe. Bayne again refused to dismiss Round Valley Indian Tribes, obscured information regarding her lack of actual contact with Round Valley Indian Tribes, and justified her failure to provide persuasive authority for filing a request for due process hearing on behalf of a party who is not a holder of Student's educational rights and whom she does not represent by flippantly stating, "Perhaps a dearth of case law on the subject supports the fact that few have wasted their time disputing [the propriety of naming as a petitioner an Indian tribe of which a student is an enrolled member, but which the student's attorney does not represent]."

On May 1, 2023, Student filed written opposition to Elk Grove's motion to dismiss Round Valley Indian Tribes. Student asserted excerpts from the Elementary and Secondary Education Act of 1965, the Indian Child Welfare Act, and California Rule of Court rule 5.24, regarding joinder of parties in family law cases in Superior Courts, supported maintaining Round Valley Indian Tribes as a party in this IDEA case. Student's opposition was supported by a declaration by Bayne, who confessed she never spoke to a member or representative of Round Valley Indian Tribes before filing a complaint naming Round Valley Indian Tribes as what Bayne termed a "co-petitioner." In Student's opposition, Bayne failed to address her authority to name Round Valley Indian Tribes as a petitioner in this administrative law proceeding when she expressly denied being the attorney for Round Valley Indian Tribes, as she was ordered to do in the April 26, 2023

Order Following Prehearing Conference Setting Schedule Re Motion to Dismiss Round Valley Indian Tribes.

On May 4, 2023, Elk Grove filed a reply, emphasizing that Round Valley Indian Tribes does not meet the IDEA definition of a parent or guardian, student, or public agency involved in any decisions regarding a pupil, which are the only proper parties in a special education due process case. (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, or any other public agency providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) Elk Grove also emphasized Bayne's failure to provide authority for her unethical conduct of filing a request for due process hearing on behalf of a party she does not represent, and her failure to correct that unethical conduct by voluntarily dismissing the party she added without legal authority to do so.

On May 9, 2023, Elk Grove filed a letter to OAH describing efforts Elk Grove's attorney made to contact Round Valley Indian Tribes and the result, specifically a letter from Round Valley Indian Tribe, executed by Lewis Whipple, Vice-President of the Round Valley Indian Tribes. By a letter dated May 5, 2023, Round Valley Indian Tribes acknowledged it does not hold educational rights for Student and does not have standing in this special education due process matter, and requested to be dismissed from this case.

Student's attorney improperly named Round Valley Indian Tribes as a petitioner in this matter. None of Bayne's explanations for why she added Round Valley Indian Tribe are supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. The Elementary and Secondary Education Act of 1965, the Indian Child Welfare Act, and California Rule of

Court rule 5.24, regarding joinder of parties in family law cases in Superior Courts, are not applicable to or persuasive authority in this special education due process case, governed by the IDEA and related state law.

Round Valley Indian Tribes is not a "parent" as defined by title 34 Code of Federal Regulations part 300.30(a) (2006), and therefore has no standing to bring claims against Elk Grove for denial of a free appropriate public education under the IDEA and related state law. Further, Bayne is not an attorney for Round Valley Indian Tribes and acted beyond her authority naming Round Valley Indian Tribes as a party she described as a "co-petitioner." There was no urgency to name an additional petitioner. Bayne's declaration regarding the efforts she made to determine whether Round Valley Indian Tribe should be a party or wanted to be a party demonstrates her failure to make a reasonable inquiry under the circumstances.

Based on Round Valley Indian Tribe's lack of standing, Bayne's lack of authority to file a complaint on Round Valley Indian Tribe's behalf, and Round Valley Indian Tribe's request to be dismissed, Round Valley Indian Tribe is dismissed from this case. This matter shall proceed against Elk Grove as presently scheduled.

Elk Grove may file a motion for sanctions in the form of Elk Grove's attorney's fees and any costs related to its motion to dismiss Round Valley Indian Tribes.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings