BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BRENTWOOD UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2024040511

ORDER TO SHIFT EXPENSES

AUGUST 5, 2024

On April 12, 2024, Parents on behalf of Student, through their attorney Sheila C. Bayne, and the Law Offices of Sheila Bayne, filed a due process hearing request with the Office of Administrative Hearings, naming Brentwood Union School District. A due process hearing request is called a complaint. The Office of Administrative Hearings is called OAH.

On May 17, 2024, OAH held a prehearing conference by videoconference. After receiving arguments from both parties, OAH dismissed Student's complaint because the issues raised were barred by the November 29, 2023, settlement agreement.

On May 22, 2024, Brentwood Union filed a motion to sanction the Law Offices of Sheila Bayne. Brentwood Union contended the Law Offices of Sheila Bayne engaged in bad faith, frivolous tactics by filing a complaint to litigate claims that were resolved through the November 29, 2023, settlement agreement. Brentwood Union further contended the Law Offices of Sheila Bayne continued to engage in bad faith, frivolous tactics by filing an opposition which erroneously claimed Student's claims were based on a violation of the settlement agreement.

Brentwood Union sought an order to shift the cost it had incurred in legal fees to the Law Offices of Sheila Bayne in the amount of $8,182.50. Brentwood Union contended the legal fees were necessary to respond to Student's complaint, including the filing of its motion to dismiss and motion for sanctions.

On July 5, 2024, the Office of Administrative Hearings, called OAH, granted Brentwood Union's motion to sanction the Law Offices of Sheila Bayne. OAH found the Law Offices of Sheila Bayne engaged in bad faith, frivolous tactics by filing a complaint seeking to litigate claims Student had waived through a November 29, 2023, settlement agreement, and continuing to pursue the frivolous claims through the May 17, 2024, prehearing conference. OAH ordered Brentwood Union to file a detailed invoice, supported by declaration, establishing the legal fees it sought to shift to the Law Offices of Sheila Bayne.

On July 9, 2024, Brentwood Union filed a response to OAH's July 5, 2024, Order. The response included a declaration by Brentwood Union's attorney and detailed invoices of the legal fees Brentwood Union incurred in its defense in this matter. In addition to the $8,182.50 Brentwood Union had incurred in legal fees by May 17, 2024, Brentwood Union seeks an additional $1,176.50 for the cost to

prepare and file its motion for sanctions and to respond to Student's opposition to the motion, for a total of $9,359.00.

In certain circumstances, an ALJ presiding over a special education proceeding is authorized to shift expenses from one party to another, or to the Office of Administrative Hearings. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist*. (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 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).)

An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, 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).)

Brentwood Union's attorney and detailed invoices established shifting the originally requested amount of $8,182.50. The legal fees Brentwood Union incurred to defend against Student's frivolous claims involved the review of Student's complaint, reviewing Student's school records, and analyzing and strategizing its defense and preparation for hearing. Brentwood Union's legal fees also included the preparation and filing of its motion to dismiss, prehearing conference statement,

response to Student's complaint, motion for sanctions, and its response to Student's opposition. The legal fees also included the cost for Brentwood Union's attorney to attend the May 17, 2024, prehearing conference. The detailed invoices established the work, time, and costs undertaken by Brentwood Union's attorneys to defend Brentwood Union was reasonable. However, since Brentwood Union failed to include a detailed invoice with its sanctions motions that requested $8,182.50, OAH will not reward Brentwood Union with any additional monies, especially since Brentwood Union should have included an invoice with the sanctions motions. Accordingly, Brentwood Union's legal fees of $8,182.50 are shifted to Sheila C. Bayne and the Law Offices of Sheila Bayne, as cost-shifting sanctions for the Law Offices' bad faith, frivolous tactics in this matter.

ORDER

1. Brentwood Union's request to shift $8,182.50 to Sheila Bayne and the Law Offices of Sheila Bayne is granted.
2. Within 30 days of this Order, Sheila Bayne and the Law Offices of Sheila Bayne shall pay Brentwood Union by certified check the sum of $8,182.50 as cost-shifting sanctions. These sanctions are imposed on Sheila Bayne and the Law Offices of Sheila Bayne jointly and severally. Neither Sheila Bayne nor the Law Offices of Sheila Bayne shall pass these costs on to Student or Student's parents.

3. Failure to comply with this order may result in a civil judgment or finding of contempt.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings