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 GRANTING MOTION TO SHIFT EXPENSES; ORDER FOR BRENTWOOD UNION SCHOOL DISTRICT TO FILE DETAILED FEE INVOICE

JULY 5, 2024

On April 12, 2024, Parents on behalf of Student, through their attorney 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 14, 2024, Brentwood Union filed a motion to dismiss Student's complaint on the grounds that Student's claims were barred by settlement agreement. A copy of the final settlement agreement was attached to the motion. The settlement agreement

was fully executed on November 29, 2023. Pursuant to the settlement agreement, Student waived all claims under the Individuals with Disabilities Education Act, called the IDEA, including a right to a free appropriate public education, called a FAPE, or California special education laws, through and including the date of full execution of the settlement agreement.

On May 17, 2024, Student filed an opposition to the motion to dismiss. Student contended OAH had jurisdiction over Student's claims because they involved a violation of the settlement agreement, which denied Student a FAPE.

On May 17, 2024, OAH held a prehearing conference by videoconference. Attorneys Robert Burgermeister, Ryan Song, and Heather Norton appeared on behalf of Student. Attorneys Dee Anna Hassanpour and Lucy Nadzharyan appeared on behalf of Brentwood Union. After receiving arguments from both parties, OAH dismissed Student's complaint because the issues raised were barred by the November 29, 2023 settlement agreement.

OAH issued a written Order dated May 20, 2024, explaining the basis for the complaint's dismissal. First, OAH determined Student's complaint failed to raise any claims based on a violation of a settlement agreement resulting in a denial of a FAPE. At the prehearing conference, Student explained that the claims raised in his complaint involved the March 3, 2023 individualized education program, not the November 29, 2023 settlement agreement. An individualized education program is called an IEP.

Second, Student's claims to challenge the offer of FAPE in the March 3, 2023 IEP were barred by the settlement agreement, even though the alleged violations continued beyond November 30, 2023, because the continuing violation doctrine does not apply in IDEA cases. (*K.P., etc., v. Salinas Union High School Dist.* (N.D.Cal. April 8, 2016, Case

No.5:08-cv-03076-HRL) 2016 WL 1394377, which interpreted the California statute of limitations, Ed. Code, § 56505, subd. (l).) Accordingly, OAH barred the issues in Student's complaint and dismissed the complaint.

At the May 17, 2024 prehearing conference, Brentwood Union represented it intended to file a motion for sanctions against The Law Offices of Sheila Bayne. The administrative law judge, called an ALJ, stated OAH would consider the motion for sanctions.

On May 22, 2024, Brentwood Union filed a motion to sanction The Law Offices of Sheila Bayne. Brentwood Union contends 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 contends 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 seeks an order to shift the cost it has incurred in legal fees to The Law Offices of Sheila Bayne in the amount of $8,182.50. Brentwood Union contends the legal fees were necessary to respond to Student's complaint, including the filing of its motion to dismiss and motion for sanctions. Brentwood Union filed a declaration by Attorney Hassanpour in support of the motion for sanctions.

On May 28, 2024, The Law Offices of Sheila Bayne on behalf of Student, filed an opposition to the motion for sanctions. Student's opposition continued to assert OAH had jurisdiction to hear Student's claims because the claims were based on a violation of a settlement agreement. Student also claims the complaint and its opposition to the motion to dismiss were not meant to harass Brentwood Union.

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).)

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).) Filing a complaint without serving it on the other party is not within the definition of actions or tactics. (*Ibid.*) 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.)

The Law Offices of Sheila Bayne engaged in bad faith, frivolous tactics by filing a complaint seeking to litigate claims Student had waived through the November 29,

2023 settlement agreement. Student's claims raised in the complaint, challenging aspects of the offer of FAPE in the March 3, 2023 IEP, were totally and completely without merit, because Student waived those claims.

On October 12, 2023, Parents on behalf of Student, through their attorney The Law Offices of Sheila Bayne filed a complaint with OAH, naming Brentwood Union. Student's complaint was designated OAH case number 2023100415. Among the claims Student raised in OAH case number 2023100415, were alleged violations involving the offer of FAPE in the March 3, 2023 IEP.

OAH case number 2023100415 proceeded to hearing. On the second day of hearing, the parties finalized the November 29, 2023 settlement agreement. Accordingly, Student's complaint in OAH case number 2023100415 was dismissed, and the remaining hearing dates vacated. A reasonable and careful attorney would have reviewed Student's complaint in OAH case number 2023100415 and the November 29, 2023 settlement agreement, and understood that realleging claims involving the offer of FAPE in the March 3, 2023 IEP was improper, and frivolous, because those claims were waived by Student through the November 29, 2023 the settlement agreement.

The Law Offices of Sheila Bayne continued to engage in bad faith, frivolous tactics by filing an opposition to the motion to dismiss, that offered contentions that were wholly irrelevant, and ignored the inapplicability of the continuing violation doctrine. The problems described in Student's complaint involved the March 3, 2023 IEP, not the November 29, 2023 settlement agreement. The complaint as written involved a challenge to the offer of FAPE in the March 3, 2023 IEP, which Student waived in the November 29, 2023 settlement agreement.

Despite the clear failure of the complaint to raise a valid claim within OAH's jurisdiction, Student through his attorney, continued to pursue the frivolous claims through the prehearing conference. The totality of frivolous tactics by The Law Offices of Sheila Bayne in this matter warrant sanctions, and shifting the legal costs incurred by Brentwood Union to defend against the meritless claims in Student's complaint is equitable.

In its defense in this matter, Brentwood Union's attorneys filed with OAH a notice of representation, a prehearing conference statement, a motion to dismiss the complaint or in the alternative to bifurcate the hearing, a response to Student's complaint, and the motion for sanctions, in addition to attending the prehearing conference. However, Brentwood Union did not file a detailed invoice of the legal fees it has incurred to support the request to shift $8,182.50 to The Law Offices of Sheila Bayne. Brentwood Union shall file a detailed invoice of its legal fees in this matter to support the shifting of $8,182.50 to The Law Offices of Sheila Bayne.

ORDER

1. Brentwood Union's motion for sanctions is granted.

2. Brentwood Union shall file with OAH within 3 business days of this Order, a detailed invoice, supported by declaration, establishing the $8,182.50 in legal fees. The amount of legal fees to be shifted from Brentwood Union to The Law Offices of Sheila Bayne will be addressed in a separate order.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings