BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PERRIS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024090725

ORDER DENYING MOTION TO SHIFT EXPENSES

FEBRUARY 20, 2025

On September 19, 2024, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Perris Union High School District, called Perris Union. OAH conducted a due process hearing on November 5, 6, 7, 12, 13, 14, and 19, 2024.

On January 3, 2025, OAH issued a decision in this matter, and reserved jurisdiction to rule on Perris Union's motion to shift expenses.

On January 31, 2025, Perris Union filed a motion to shift expenses against the Law Office of Sheila C. Bayne, and individually against attorneys Sheila C. Bayne, Ryan Song, and Michelle Wilkolaski, jointly and severally, for their bad faith actions in the above captioned matter, and for litigating a case that was without merit.

On February 6, 2025, Bayne filed an opposition to Perris Union's motion to shift expenses. Bayne's opposition was supported by a declaration by Sheila Bayne opposing the motion for sanctions.

FEE SHIFTING UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act, called IDEA, permits a court, in its discretion, to award reasonable attorneys' fees as part of the costs to a prevailing party who is a State educational agency or local educational agency against:

- the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation;
- against the attorney of a parent who continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation;
- or to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (20 U.S.C. § 1415(i)(3)(B)(i)(II), (III); 34 C.F.R. § 300.517(a)(1)(i) & (a)(1)(iii).).)

An improper purpose includes filings that are made to harass the school district, cause unnecessary delay, or needlessly increase the costs of litigation. (34 C.F.R. § 300.517(a)(1)(iii).)

Only courts have the authority to award attorney's fees to a party that prevails in an action under the IDEA. (34 C.F.R. § 300.517(a)(1).) The district courts of the United States have jurisdiction over actions challenging the decision of an administrative

agency and requests by a prevailing party for an award of attorneys' fees. (20 U.S.C. § 1415(i)(2)(A), (3)(A) & (B)(i)(II), (III); 34 C.F.R. § 300.517(a)(1)(i) & (a)(1)(iii).) A party seeking attorney's fees as a prevailing party bears the burden of documenting the hours spent on the litigation and the hourly rates of the attorneys. (*Hensley v. Eckerhart* (1981) 461 U.S. 424, 437) Courts must base all fee awards on "rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished." (34 C.F.R. § 300.517(c)(1).)

Accordingly, the district courts of the United States, and not an administrative agency such as OAH, have jurisdiction to award reasonable attorney's fees against a parent's attorney whose actions meet the criteria under title 20 United States Code section 1415(i)(3)(B)(i)(II) and (III), and title 34 Code of Federal Regulations section 300.517(a)(1)(i) and (iii).

FEE SHIFTING UNDER CALIFORNIA LAW

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding 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 ex rel. Wyner v. Manhattan Beach Unified Sch. 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).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing 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 the entity that is responsible for conducting due process hearings) 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. Code, § 11455.30, subd. (a).)

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 ALJ is a presiding officer who may sanction individuals in an adjudicative proceeding, defined as an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision. (Gov. Code, §§ 11405.80, 11405.20; Cal. Code Regs., tit. 5, § 3088.)

"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).) Frivolous, and totally and completely without merit, has been interpreted to mean "any reasonable attorney would agree such [challenged conduct] is totally devoid of merit." (*Karwasky v. Zachay* (1983) 146 Cal.App.3d 679, 681, citing *In re Marriage of Flaherty,* 31 Cal.3d 637, 649–650.) 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.) Monetary sanctions may not be awarded against a represented party for a violation of presenting a claim, defense, and other legal contentions that are warranted

by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. (Code Civ. Proc., § 128.5, subd. (f)(2)(A).)

An order of sanctions shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. (Code Civ. Proc., § 128.5, subd. (f)(2).) If warranted for effective deterrence, an order may direct payment of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the action or tactic. (*Id.*) The courts shall vigorously use their sanction authority to deter improper actions or tactics. (Code Civ. Proc., § 128.5, subd. (g); see also *Letter to Irby* (U.S. Dept. of Educ., Office of Special Education Programs (OSEP) (February 12, 2010) [OSEP suggested a school district's remedy for frivolous claims or conduct could include a reduction of the prevailing student's attorney's fees award, or shifting the school district's attorney's fees to the student's attorney or parent].) In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence. (Code Civ. Proc., § 128.5, subd. (f)(1).)

OAH has the authority to controls its proceedings and persons appearing before it. (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a); Code Civ. Proc., § 128.5, subdivision (a).) The following are examples of circumstances where ALJs presiding over a special education due process proceeding have ordered a party's attorney to pay reasonable attorney's fees as a result of bad faith actions or tactics that were frivolous or solely intended to cause unnecessary delay:

- failing to comply with OAH's prehearing conference order to prepare a joint proposed witness schedule (*Student v. Stockton Unified Sch. Dist.* (Aug. 28, 2024) OAH Case No. 2024050096);

- failing to produce a scheduled expert witness for due process hearing (*Student v. Chaffey Joint Union High Sch. Dist.* (Aug. 20, 2021) OAH Case No. 2020120161);
- failing to file an accurate prehearing conference statement in disregard of an ALJ's order (*Student v. San Marcos Unified Sch. Dist.* (April 4, 2022) OAH Case No. 2021120803);
- knowingly and deliberately failing to comply with ALJ's order to file a prehearing conference statement in compliance with OAH's pleading requirements (*Student v. Yuba City Unified Sch. Dist.* (April 5, 2023) OAH Case No. 2023020646);
- repeatedly refusing to participate in a resolution session (*Student v. Twin Rivers Unified Sch. Dist.* (April 24, 2023) OAH Case No. 2023020613);
- naming a party in a due process complaint that was not the attorney's client (*Student v. Elk Grove Unified Sch. Dist*. (May 24, 2023) OAH Case No. 2023030253); and
- filing a complaint to litigate claims previously resolved in a settlement agreement (*Student v. Brentwood Union Sch. Dist.* (August 5, 2024) OAH Case No. 2024040511).

As demonstrated in the above orders, an ALJ may shift fees to a party's attorney where their bad faith actions or tactics are frivolous or solely intended to cause unnecessary delay. (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) In each of the above orders, the attorney disregarded an order by the ALJ, blatantly disregarded OAH's pleading requirements, or engaged in bad faith actions or tactics that were frivolous or solely intended to cause unnecessary delay in the matter pending before the ALJ presiding over the proceeding.

PERRIS UNION'S MOTION TO SHIFT FEES FAILS

OAH issued the decision in this matter on January 3, 2025. Perris Union prevailed on all five issues, and Student was denied relief on each issue. Perris Union seeks a sanctions order for payment of its attorney's fees in the amount of $67,444.50, together with paralegal fees in the amount of $1,236.00. Perris Union is the requesting party, and therefore it bears the burden of proof to demonstrate Student's attorneys' actions merit sanctions. (*Schaffer v. Weast* (2005) 549 U.S. 49, 62.)

Perris Union's request for fees is based on the following contentions:

1. Parent's attorneys intentionally and frivolously prolonged the litigation;
2. Parent's attorneys violated their obligation to meet and confer with Perris Union's attorney to coordinate the joint witness schedule;
3. Parent's attorneys asserted claims that were without merit; and
4. Parent's attorneys violated their ethical obligations to their client.

With respect to the first contention, Perris Union argues that Student intentionally delayed the litigation by filing three complaints involving almost identical issues against Perris Union. Perris Union argues the three complaints were filed for an improper purpose, such as to harass Perris Union, to cause unnecessary delay, or to needlessly increase the costs of litigation. (20 U.S.C. § 1415(i)(3)(B)(i)(II), (III); 34 C.F.R. § 300.517(a)(1)(i) & (a)(1)(iii).)

Similarly, in its second contention, Perris Union argues that Parent's attorneys violated their obligation to meet and confer with Perris Union to develop the joint witness schedule for the due process hearing resulting in increased expenses for Perris Union. Perris Union argues these actions were done in bad faith and for the purpose of

harassing Perris Union, causing unnecessary delay, or needlessly increasing the costs of litigation.

Only an ALJ presiding over a hearing may place expenses at issue. (Cal. Code. Regs. tit. 5, § 3088, subd. (b).) Here, Perris Union did not incur costs because of a motion pending before OAH based on an ALJ placing expenses at issue. Rather, Perris Union requested reimbursement of costs incurred in defending the three complaints filed by Student and meeting and conferring with Parent's attorneys to develop the joint witness schedule. OAH declines to order sanctions, including costs shifting, based upon Perris Union's first and second contentions because the ALJ did not place expenses at issue.

In its third contention, Perris Union argues the issues raised by Student were totally and completely without merit. Specifically, Perris Union argues Student alleged claims relating to Student's need for applied behavior analysis services, parent training, and an educationally related mental health assessment, although Parent's testimony indicated she was not aware of these claims until the complaint was filed. Further, Perris Union contends Student asserted claims knowing they were barred by the statute of limitations, and withdrew two issues relating to Perris Union's offer of transition services in his closing brief, after a considerable amount of time was spent in hearing addressing these issues.

Perris Union's motion for sanctions as to its third contention is denied because the federal district court, and not OAH, is the appropriate court to determine whether Stockton is entitled to attorneys' fees based on improper and frivolous actions by Parent's attorneys pursuant to title 20 United States Code section 1415(i)(3)(B)(i)(II) and (III).

Finally, in its fourth contention, Perris Union argues Parent's attorneys violated their ethical obligations to their clients on various grounds. Perris Union cites no authority in support of its standing to assert an ethical violation against Parent's attorneys on Parent's behalf. Therefore, Perris Union's motion to shift expenses as to the fourth contention is denied.

This Order does not prevent Perris Union from filing a claim for its attorney fees or other sanctions in a court of competent jurisdiction, such as a federal district court in accordance with title 20 United States Code section 1415(i).

ORDER

Perris Union's motion to shift expenses is denied.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings