BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020649

ORDER DENYING MOTION FOR SANCTIONS

OCTOBER 15, 2024

The Office of Administrative Hearings, called OAH, conducted a due process hearing in this matter on April 9, 10, 11, 16, 17, and 18, 2024.

On May 13, 2024, Stockton Unified School District filed a Motion for Sanctions against the Law Offices of Sheila C. Bayne, and individually against Attorneys Sheila C. Bayne, and Robert Burgermeister, collectively with the law firm, as Student's attorneys, and referred to in this Order as "Bayne." For purposes of clarity in this Order, the child on behalf of whom the complaint was filed is referred to as "Student."

On May 17, 2024, Bayne filed an Opposition to Stockton Unified's motion. On May 21, 2024, Stockton Unified filed a Response to Bayne's Opposition. On May 22, 2024, Bayne filed a Reply to Stockton Unified's Response to Bayne's Opposition.

On June 3, 2024, OAH issued a Decision in the matter, and reserved jurisdiction to rule on Stockton Unified's Motion for Sanctions.

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 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).)

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 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 (*West Coast*).)

As cited by Bayne's Opposition, the Individuals with Disabilities Education Act, called IDEA, allows for the award of attorney's fees as sanctions only where the complaint has proceeded to hearing, and a party, here Stockton Unified, has prevailed. (20 U.S.C. § 1415(i)(3)(B)(i)(II).)

Pursuant to the June 3, 2024 Decision, Stockton Unified prevailed on all three issues, and Student was denied relief on each issue.

Stockton Unified is the requesting party, therefore Stockton Unified bears the burden of proof to demonstrate Student's complaint and actions merit sanctions. (*Schaffer v. Weast* (2005) 549 U.S. 49, 62.)

DISCUSSION

Stockton Unified seeks a sanctions order for payment of its attorney's fees and costs in OAH Case Number 2024020649, referred to as the current matter, as well as in Student's initial due process complaint, *Student v. Tracy Unified School District and Stockton Unified School District,* OAH Case Number 2023110151, referred to as the

initial matter, which Bayne withdrew without prejudice on December 19, 2023, three hours prior to the commencement of hearing.

Bayne's opposition provides nothing more than a smoke screen, methodically dissecting "Rule 11" without providing the citation to this legal standard. Bayne's reliance on "Rule 11" referred to Federal Rules of Civil Procedure, Rule 11, 28 United States Code, Rule 11. Bayne, however, disregarded the fact that OAH, as an administrative agency in California, is not governed by the federal standard. Although similar in content, OAH relies on California statutes. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).)

OAH CASE NUMBER 2023110151

On December 18, 2023, Stockton Unified filed a Motion for Sanctions against the Law Offices of Sheila C. Bayne. On December 27, 2023, OAH issued an Order Vacating Hearing Dates and an Order to Show Cause Why Student and Bayne Should Not be Ordered to Pay OAH's expenses.

The Order to Show Cause and Sanctions Motion on OAH Case Number 2023110151 was heard on January 22, 2024, and on March 12, 2024, OAH issued an Order Determining OAH Expenses Will Not be Shifted to Bayne. The ALJ in that matter determined that although discourteous acts may justify sanctions (*West Coast*, *supra*., at p. 702-703, citing *In Re Marriage of Gumabao* (1984) 150 Cal. App. 3d, 572, 577.), the failure of Bayne to communicate directly with opposing counsel in the meet and confer process, and to provide earlier notice of Parent's decision not to proceed to hearing was excusable due to Bayne's illness and did not rise to the level of frivolous bad faith actions or tactics in that case.

Student's sole issue against Stockton Unified in the initial due process complaint was whether Stockton Unified denied Student a free appropriate public education, called FAPE, from the beginning of the 2022-2023 school year through October 31, 2023, by failing to refer Student for special education, assess Student, and find Student eligible for special education, pursuant to its obligation known as "child find." As a result of the March 12, 2024 Order, and factual determinations therein, Stockton Unified's request for monetary sanctions and shifting of expenses as it pertains to OAH Case Number 2023110151, will not be considered as part of Stockton Unified's current motion for purposes of sanctions. Simply put, the ALJ denied Stockton Unified's motion in the initial case.

OAH CASE NUMBER 2024020649

Contrary to Bayne's contentions, OAH's decision not to award sanctions to Stockton Unified in the initial matter did not act as a green light for Student refiling the case, nor did it act as a shield for a frivolous complaint.

The factual findings in the initial matter remain relevant as significant evidence of a pattern of continuing actions of bad faith in the current case, OAH Case Number 2024020649. On its own merits, the current matter, OAH Case Number 2024020649, justifies payment of Stockton Unified's attorneys fees required to defend on a frivolous complaint.

After dismissing OAH Case Number 202311051 on December 19, 2023, Bayne refiled Student's complaint on February 16, 2024. The new complaint contained three issues alleging denial of FAPE. Student reiterated his previous issue of a FAPE denial due to the same child find issue and made two additional contentions of FAPE denials based upon a:

(1) failure to provide prior written notice to a request for health services on March 31, 2023, and

(2) failure to offer a speech and language assessment in the November 16, 2023 assessment plan.

The hearing lasted six days. Stockton Unified prevailed on each issue.

BAYNE'S ACTIONS CAUSED UNWARRANTED DELAYS AND EXPENDUTURES OF TIME

Bayne's lack of legal prowess in understanding the elements of Student's own issues was prevalent throughout the hearing and resulted in significant delays and expenditures of hearing time.

First, Bayne failed to establish a functional knowledge of Student's issues. For example, during witness examination, Bayne frequently confused the elements of Student's educational accommodations plan under section 504 of the Rehabilitation Act of 1973, called 504 Plan, with the elements of an individualized education program, called IEP, under the IDEA, based upon eligibility for special education. Despite the ALJ's continuing reminders and sustained objections that OAH did not have jurisdiction over Student's 504 Plan, Bayne persisted in examining witnesses about 504 Plan issues which were immaterial to Student's case.

Second, Bayne displayed an ignorance of basic evidentiary law, by repeatedly attempting to enter documents into evidence without establishing any foundation whatsoever. Bayne's selection of witnesses for Student's case-in-chief included district personnel who had no personal knowledge of Student nor had ever been involved in Student's educational program. Bayne remained oblivious throughout the hearing that

a sustained objection to "asked and answered" meant stop asking the same question repeatedly. Ironically, frequently repeating the same question often resulted in multiple witness responses being consistently contrary to the responses sought on Student's behalf.

Third, Bayne continued to rely on the testimony of the law firm's two regularly retained special education "experts" although most if not all their expert testimony in at least five prior due process hearings before OAH, resulted in rejection of their testimony and findings of no credibility as experts. Likewise, in the current hearing, these witnesses lacked credibility throughout their testimony as they lacked the requisite expertise in the areas in which Bayne sought their opinion. This was compounded by Bayne's questionable tactics of delaying their experts' initial interviews with Parent and Student until after most testimony was completed, except that of Parent and Student's experts. This tactic, failed to pass the smell test for reliability and sound, independent thinking. In short, Student's experts testified for two days and could only mirror Student's contentions which were unwinnable from the start.

BAYNES ACTIONS WERE IMPROPER AND FRIVOLOUS

The State Bar Act and the rules of Professional Conduct apply to proceedings before OAH. OAH is a "court" within the meaning of Business and Professions Code section 6103, which authorizes sanctions for an attorney's dereliction of duties. (*In the Matter of Moriarty* (Cal. Bar Ct. Apr. 20, 2017) 5 Cal. State Bar Ct. Rptr. 511, 522, 2017 WL 1424407 at **7-8.)

Under rule 1.2 of the Rules of Professional Conduct, regarding the "Scope of representation and Allocation of Authority," an attorney must have a client on whose behalf the attorney undertakes actions, and the attorney, "shall abide by a client's

decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably consult with the client as to the means by which they are to be pursued."

Parent testified that she had never seen the current due process complaint, which was filed on Student's behalf, nor did she request or authorize several remedies requested in the complaint. Parent did not know what some remedies were, such as LindaMood Bell, an educational remediation program, or how the remedies would help her child.

Parent, as Student's last witness, established the most alarming testimony. Stockton Unified provided the Law Office of Sheila C. Bayne an assessment plan for Student dated November 16, 2023, as part of Stockton Unified's Response to Student's initial complaint. Parent testified she was never informed of the November 16, 2023 assessment plan, nor was Parent requested to consent to an assessment plan to assess Student for special education eligibility. Parent appeared devastated at hearing when provided a copy of the assessment plan at hearing, which added to the credibility of her statements.

Nevertheless, Bayne continued to pursue the contention that an assessment plan was never provided to Parent. This was patently untrue and within the knowledge of Bayne, prior to filing the current complaint, thusly attempting to intentionally mislead the ALJ at hearing.

As mitigation, Bayne initially suggested at hearing that since Parent had not received the assessment plan, the assessment plan did not legally exist. This contention was completely contraindicated by the current complaint's third issue, which specified that the November 16, 2023 assessment plan denied Student a FAPE. Bayne had the

assessment plan in its possession and totally ignored that they legally represented Student in both the initial and current case.

Bayne's omissions were not cohesively brought to light until Parent's testimony late in Student's case-in-chief. Only then did Stockton's cross examination establish that Bayne received an assessment plan in November 2023 and never presented it to Parent for consent. Further, Bayne knew Parent never consented to a special education assessment plan. Bayne continued to rely on its offer of proof that Parent had not personally receive the assessment plan directly from Stockton Unified.

Bayne's request for remedies required a determination that Student was eligible for relief under the IDEA.

As stated in Student's complaint; to remedy a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Bayne should have known that based upon the issues presented in the current matter, there was no way in which to provide Student with any relief whatsoever, as Bayne withheld Parent's consent to assess Student.

Bayne knew Stockton Unified offered an assessment plan to Student prior to filing the current due process matter. Bayne knew that even as of the hearing date, Parent had not provided consent for Stockton to assess Student.

By withholding consent to the assessment plan, Bayne could not sustain the burden of proof for a denial of FAPE under any circumstance. Without assessment, and the subsequent determination of eligibility, Bayne could not obtain remedies on behalf of Student other than an order to assess Student, which was moot prior to the filing of

the current case. The determination of Student's eligibility for special education was thwarted by Bayne's own actions.

Bayne's actions in filing the current matter were improper and frivolous. Filing a complaint on behalf of Student which was not warranted by existing law, or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law is totally devoid of merit.

DETERMINATION OF SANCTIONS

It is noteworthy that Bayne has been repeatedly sanctioned by OAH in the form of shifting costs for other school districts due to frivolous or bad faith conduct in those matters. Bayne's prior conduct is relevant to the consideration of what sanctions are sufficient to deter repetition of similar tactics. Given the number of significant sanctions orders granted by OAH against the Law Offices of Shelia C. Bayne, in favor of a variety of school districts, it is frustrating to note that Bayne has taken nothing to heart and continues with business as usual.

Stockton Unified provided declarations regarding the legal fees billed by Stockton's attorneys for the period of December 12, 2023, through December 19, 2024, in preparation for hearing on the initial complaint in OAH Case Number 2023110151. As indicated above, this Order does not override the prior denial of sanction on OAH Case Number 2023110152.

The conduct of the Law Offices of Sheila Bayne and the individual attorneys named herein, was intentional and egregious in wasting the time and efforts of Stockton's attorneys in litigating the current complaint. Bayne also wasted the time and resources of Stockton's personnel, as well as that of the ALJ and OAH. Throughout recent years, Bayne has steadfastly remained unrepentant in ignoring sanctions against

the law firm, and its individual attorneys. Bayne has remained oblivious and undaunted to the financial burden its actions place on school districts as well as OAH and the State of California.

MORE APPROPRIATE TO SEEK ATTORNEYS' FEES FROM DISTRICT COURT

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy. The court, in its discretion, may award attorney's fees:

(II) to a prevailing State educational agency, or local educational agency against the parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or a parent, if the complaint or subsequent action was presented for any improper purpose, such as to harass, cause unnecessary delay, or to needlessly increase the cost of litigation. (20 U.S.C. § 1415 (i)(3)(B)((i)(II)-(III).)

Sanctions, even with an accompanying referral to the California State Bar, have not enlightened the Law Office of Shelia Bayne to reform its tactics of filing frivolous complaints. In the current action, Stockton failed to submit invoices or provide evidence of attorney expenditures for the current complaint. While the amount of reasonable attorney time spent chasing a frivolous complaint during the hearing could be ascertained by taking judicial notice of the amount of time spent by the ALJ in hearing, it does not take into consideration the additional hours of preparation expended in

representing Stockton from the date of filing through the submission of closing briefs. Nor does it revisit the expenditures connected to the ill-fated initial complaint.

Throughout recent years and specifically in the current complaint, Bayne has steadfastly remained unrepentant in ignoring sanctions against the law firm, and its individual attorneys. Bayne has remained unapologetic to the financial burden its actions places on school districts as well as OAH and the State of California.

However, Stockton's Motion for Sanctions is denied because the District Court, and not OAH, is the appropriate court to determine whether Stockton is entitled to attorneys' fees due to Bayne's improper and frivolous actions pursuant to 20 United States Code section 1415 (i)(3)(B)(i)(II)-(III).

ORDER

Stockton Unified's Motion for Sanctions is denied.

Judith Pasewark

Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings