BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2024101087

ORDER GRANTING MOTION TO SHIFT EXPENSES

JULY 11, 2025

On October 30, 2024, the Law Offices of Sheila Bayne, called Bayne, commenced this matter by filing a 78-page Complaint and Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, against Chula Vista Elementary School District and La Mesa-Spring Valley School District on behalf of Student.

The issues contained in Student's complaint, covered the statutory period of October 30, 2022 through October 30, 2024. Parent reported that Student enrolled in La Mesa-Spring Valley for the 2024-2025 school year on August 19, 2024. Prior to that, Student was enrolled in Chula Vista. La Mesa-Spring Valley had had just over two months to implement Student's last agreed upon individualized education program, called IEP, from Chula Vista, before Student filed the complaint on October 30, 2024. La Mesa-Spring Valley held an IEP team meeting on September 9, 2024, to review the IEP.

As a result, most of the estimated six days of hearing scheduled for this matter were devoted to the allegations against Chula Vista. Of the 12 exhibits uploaded by Student for hearing, only one pertained to La Mesa-Spring Valley.

Pursuant to the Order Following Prehearing Conference, dated December 17, 2024, OAH continued the due process hearing to April 8, 9, and 10, 2025.

Student settled the case against Chula Vista on April 2, 2025, and notified OAH and La Mesa-Spring Valley of this agreement near the close of business the next day.

On April 7, 2025, La Mesa-Spring Valley filed a Motion for an Order to Show Cause regarding Student's failure to comply with OAH's meet and confer requirements contained in the December 17, 2024 Order Following Prehearing Conference, California Education Code section 56505 notice requirements, and Student's ability to orderly proceed as requested with the due process hearing. La Mesa-Spring Valley sought to have Student's due process complaint dismissed with prejudice. Student did not file a written response or objection to the April 7, 2025 motion.

Prior to the commencement of testimony on April 8, 2025, the ALJ heard oral arguments regarding La Mesa-Spring Valley's April 7, 2025 motion. Counsel for La Mesa-Spring Valley reiterated the information and sworn declarations contained in the April 7, 2025 motion on the record. Between the continuance of the due process hearing on January 23, 2025, and the commencement of hearing on April 8, 2025, Bayne failed to provide a substantive response to any of La Mesa-Spring Valley's 12 email attempts to meet and confer for hearing and to discuss the settlement offer presented to Bayne.

Student's counsel Wilkolaski argued that Student complied with OAH meet and confer requirements in January 2025 and was not required to act further. Upon settling

its claims against Chula Vista on April 2, 2025, the number of relevant witnesses and exhibits were drastically reduced from Student's proposed witness and exhibit lists proffered in January 2025. La Mesa-Spring Valley witnesses, initially scheduled for the later days of hearing, needed to be discussed by the parties and rescheduled for the first days of hearing, yet no communication from Bayne was forthcoming. Instead, Bayne unilaterally uploaded a proposed joint witness schedule, dated April 7, 2025, after being served with La Mesa-Spring Valley's motion. La Mesa-Spring Valley filed a Notice of Objection, as the witness schedule was neither timely nor jointly discussed by the parties. As a result, Student did not have witnesses scheduled for the first day of hearing.

The ALJ orally issued a rebuke of the unprofessional conduct of attorney Wilkolaski and other employees of the Law Office of Sheila Bayne. The ALJ found that Wilkolaski's actions were no longer excused under a theory of plausible deniability because the conduct was similar to Bayne's conduct in several previous OAH cases, such as OAH Case Number 2023100984 discussed later below. Bayne's failure to respond to La Mesa-Spring Valley, especially in light of the settlement with Chula Vista, was rude, outrageous, and unprofessional, which caused both La Mesa-Spring Valley and the ALJ to spend unnecessary time and effort to prepare for hearing as Bayne did not have any witnesses ready to be called on the first day of hearing.

In an abundance of caution, however, to preserve Student's rights to a hearing, the ALJ denied La Mesa-Spring Valley's April 7, 2025 motion to dismiss but retained jurisdiction over the issue of sanctions or other appropriate relief in the event of continuing non-compliance or other bad faith action by the parties.

The ALJ recessed the hearing to 1:00 p.m., to allow the parties to comply with OAH's previous orders, and to allow Wilkolaski to prepare for Parent's testimony as Student's first witness.

Despite Parent informing Bayne prior to the hearing that she would be unavailable on the afternoon of April 8, 2025, due to a prescheduled appointment, Wilkolaski failed to inform the ALJ that Parent would be unavailable for testimony for the full afternoon. When the hearing resumed at 1:00 p.m., Parent apologized and informed the ALJ of her unavailability.

Parent's testimony commenced for a short period on April 8, 2025. Student's direct examination of Parent did not go well. The ALJ concurs with La Mesa-Spring Valley's contention that Parent's testimony made it abundantly clear that Parent had not been informed of the nature of the proceedings or the status of her claims against La Mesa-Spring Valley. In her testimony, Parent as Student's primary witness, was extremely complimentary of the educators and staff at La Mesa-Spring Valley. Parent reported that Student's regression was due to his experiences at Chula Vista, not at La Mesa-Spring Valley. Student attended La Mesa-Spring Valley for only a few weeks and had not exhibited further regression. When asked about her requested relief as contained in Student's complaint, Parent testified she had not requested most of the items demanded. As example, Parent did not request home applied behavior analysis therapy. Nor did Parent request extended school year services. Parent liked the accommodations contained in the September 5, 2025 IEP and described them as appropriate and fair.

Parent's primary concern was a one-to-one aide for Student, as Parent believed Student learned best in a one-to-one setting. Parent reported La Mesa-Spring Valley's

school psychologist was open-minded and helpful, kept in touch with her, and arranged requested assessments. Parent emphasized that the IEP team "heard her."

Parent credibly testified that she was instructed by Bayne not to sign the proposed IEP. Much to Parent's dismay, she only found out at hearing that Bayne failed to share La Mesa-Spring Valley's offer to provide a one-to-one aide, which was all she wanted. Instead, Parent was kept in the dark and urged to proceed to hearing.

Parent's testimony did not resume on the morning of April 9, 2025, as scheduled. Instead, Parent requested to make a statement to the ALJ and terminate the legal services of the Law Offices of Sheila Bayne.

Parent was articulate in her statement, which was heartfelt and painful. Parent reflected on her own difficulties with communication from Bayne, which she compared to the problems La Mesa-Spring Valley described in the April 7, 2025 motion. She apologized again for taking the court's time for something she never wanted. Bayne's actions did not represent who she was or what she wanted for her child.

After a short recess, OAH accepted a Notice of Withdrawal of Attorney for the Law Offices of Sheila Bayne. The hearing reconvened with Parent representing Student. Parent requested that the complaint against La Mesa-Spring Valley be dismissed with prejudice. After a thorough advisement of Parent's rights, the ALJ dismissed Student's complaint with prejudice as requested.

FEE SHIFTING

In certain circumstances, an 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.)

BAYNE'S ACTIONS WERE IN BAD FAITH AND FEE SHIFTING IS WARRANTED

Bayne in their opposition to La Mesa-Spring Valley's motion, made several arguments, the first being that no bad faith actions occurred. Bayne contends that any miscommunications in the meet and confer requirements were not purposeful and were not intended to harass La Mesa-Spring Valley. Bayne's misconduct, however, does not solely lie in their failure to meet and confer. Bayne failed to respond to at least a dozen email communications regarding readying the case for hearing and revising Student's witness and exhibit lists, which resulted in Student being unprepared to commence the hearing on April 8, 2025. Bad faith lies in Bayne's filing of a "proposed joint witness statement" with OAH the day before hearing which was not discussed with La Mesa-Spring Valley, thereby leaving no time to schedule La Mesa-Spring Valley employees for testimony. Bayne's failure to inform La Mesa-Spring Valley's counsel and the ALJ of Parent's unavailability for testimony also delayed the commencement of the hearing. These actions are significant and represent a continuing pattern of egregious behavior which permeates numerous sanction orders issued by OAH against Bayne.

The crux of the issue of bad faith in this matter, however, stems from naming La Mesa-Spring Valley as a respondent in a 78-page complaint on issues to which La Mesa-Spring Valley played no part, which Parent did not support, and which sought extensive remedies Parent did not request. Based upon Wilkolaski's direct examination of Parent, it was abundantly clear that Student's claims against La Mesa-Spring Valley lacked merit and were completely baseless. Had Wilkolaski spent even a modicum of time reviewing the case and preparing Parent for hearing, she would have discovered Student's claims were baseless.

Bayne contends that Parent's desire to settle the case at hearing is not evidence of attorney misconduct. Bayne misstates the evidence. OAH encourages settlement even at hearing. This matter was not subject to settlement either with or without the representation of Bayne. On April 9, 2025, prior to the recommencement of Student's case-in-chief, Bayne filed a Notice of Withdrawal as Attorney for Student. When the hearing resumed, Parent requested the matter be dismissed with prejudice, as she never had a desire to pursue claims against La Mesa-Spring Valley.

The Rules of Professional Conduct dictate an attorney will abide by a client's wishes concerning the objectives of representation. (Rules of Prof. Conduct, rule 1.2.) However, the rules further dictate that a lawyer shall keep the client reasonably informed about significant developments. (Rules of Prof. Conduct, rule 1.4). Here, Bayne's firm and her supporting cast of attorneys clearly failed to communicate with a client.

Bayne's contention they did nothing to prevent Parent from settling the case prior to hearing contradicts Parent's credible testimony, in which she indicated she had not been presented with a settlement offer and was only told not to sign the proposed IEP. Withholding such information constitutes reprehensible bad faith.

Bayne contends that Sarah Sutherland, currently employed by the Law Office of Hatch and Cesario, had no standing to request fee shifting because all claims relating to the motion occurred while Sutherland was an employee of the Law Office of Orbach, Huff and Henderson. Bayne's contention is misguided. The motion for fee shifting was brought on behalf of La Mesa-Spring Valley, not on behalf of Sutherland or Hatch and Cesario. It is La Mesa-Spring Valley that has standing and was harmed by Bayne's bad faith actions and misconduct. Further, Bayne provided no authority to suggest that attorneys cannot continue to represent clients when they change law firms.

La Mesa-Spring Valley noted it did not elect to pursue its actual attorney's fees and costs through the district court under 20 United States Code section 1415(i)(3), a sum which would reasonably exceed the monetary amount requested in this motion. Instead, La Mesa-Spring Valley seeks only the shifting of expenses in this matter related to Bayne's failure to meet and confer on or after April 1, 2025, as ordered by OAH available under Title 5 of California Code of Regulations section 3088, subdivision (a) and Government Code section 11455.30, subdivision (a).

Sutherland submitted a declaration reporting that La Mesa-Spring Valley incurred legal fees in the amount of $13,128.50 between April 1 and April 11, 2025, specifically related to attempts to meet and confer with Bayne's office, the preparation of the April 7, 2025 Motion for Order to Show Cause, and representation of La Mesa-Spring Valley during the hearing. Sutherland considered the rates charged and time spent on these activities reasonable, and alleged they were incurred by Bayne's dilatory, bad faith tactics that resulted in an unnecessary hearing that lasted a day and a half. The amount requested does not include all fees and costs incurred in that period, or any of the fees and costs incurred from the matter's inception in October 2024, that included the many meet and confer efforts prior to April 1, 2025.

Based upon her review of invoices and time entries, for the period of April 12 to May 21, 2025, the date of the motion to shift costs, Sutherland indicated that La Mesa-Spring Valley incurred an additional $8,019.00 to prepare this motion. Sutherland contends the rates charged and amount of time spent are reasonable.

Bayne's conduct in this matter is a continuation of a documented history of similar conduct and excuses in other OAH cases, which have resulted in sanction orders due to Bayne's repeated disregard for procedural obligations, and standards of professional conduct. Bayne's actions in this current matter are disconcertedly similar to

those presented by Bayne in the Order Granting Chula Vista's Motion to Shift Expenses, OAH Case Number 2023100984, issued March 6, 2024, in which Bayne and her associates failed to appropriately meet and confer with District's counsel, failed to respond to email communications, filed and served a unilateral "joint witness statement," and assigned associate counsel to the hearing who were unprepared to go forward on the first day of hearing. In that matter, ALJ Kirkorian cited three prior matters in which Bayne was sanctioned for similar transgressions. (See OAH Case Nos. 2023020611, 2022080550, and 2023020646). To those cases OAH now adds additional sanctions orders against Bayne in OAH Case Nos. 2024050096, 2024040511, 2024020551, 202300984, and 2023100314. (Copies of these Sanctions Orders are available at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Orders/Page-Content/Orders-List-Folder/Orders-re-Sanctions-and-Shifting-Costs.)

Bayne's actions establish a clear demonstration of a frivolous filing, if not a fraudulent filing, constituting a continuing pattern of bad faith inflicted by Bayne. Bayne's conduct in this matter is a continuation of a documented history of similar conduct and excuses in other OAH cases, including prior matters before the undersigned ALJ, which have resulted in sanction orders due to Bayne's repeated disregard for procedural obligations, and standards of professional conduct. In this matter, the Law Office of Sheila Bayne, is ordered to pay to the Law Office of Hatch and Cesario on behalf of La Mesa-Spring Valley School District, the sum of $21,147.50 as documented in its Motion to Shift Fees.

ORDER

1. La Mesa-Spring Valley School District's Motion to Shift Expenses is granted.

2. The Law Office of Sheila Bayne, including attorney Michelle Wilkolaski, jointly and severally, are ordered to pay to the Law Office of Hatch and Cesario on behalf of La Mesa-Spring Valley School District, the sum of $21,147.50 within 30 days of this Order.
3. Failure to comply with this order may result in a civil judgment or finding of contempt.
4. A copy of this Order shall be forwarded to the State Bar of California.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings