

# CLIENT NEWS BRIEF

## Ninth Circuit Court of Appeals Cuts off Recovery of Attorneys' Fees Incurred after Parents Reject School District's Settlement Offer in Due Process Hearing

On March 16, 2016, the Ninth Circuit Court of Appeals held that a parent of a child with a disability was not entitled to recover attorneys' fees incurred after the date a school district presented a settlement offer, even though the parent ultimately prevailed in a special education due process hearing. (*Beauchamp v. Anaheim Union High School District* (9th Cir. 2016), 2016 U.S. App. LEXIS 4805 (*Beauchamp*)). The Ninth Circuit found the relief that the parent obtained at the due process hearing was not more favorable than what the school district offered in settlement, nor was the parent substantially justified in rejecting the district's offer. *Beauchamp* highlights the importance of school districts presenting strong settlement offers prior to a due process hearing, and provides much-needed guidance on appropriate terms and language to include in settlement offers to effectively cut off a potential recovery of attorneys' fees.

In *Beauchamp*, a 10<sup>th</sup>-grade student had been involved in a disciplinary incident. The Anaheim Union High School District (District) initiated disciplinary proceedings and placed him in a community day school. At that time, he was not eligible to receive special education and related services. However, soon thereafter, the District conducted special education assessments of the student at the parent's request, and found him eligible for an Individualized Education Program (IEP). The parent then filed a due process complaint with the Office of Administrative Hearings (OAH), claiming the District: (1) had a "basis of knowledge" that the student had a disability at the time he was disciplined; and (2) violated its "child find" obligations by failing to timely refer the student for assessment when it had reason to suspect he may have a disability.

OAH bifurcated the complaint into two separate hearings. The first hearing was held on an expedited basis to determine whether the District, at the time of disciplining student, had a "basis of knowledge" that he was a student with a disability and thereby entitled to disciplinary safeguards. The Administrative Law Judge (ALJ) found in the student's favor. The District appealed the outcome to a federal district court, which affirmed the ALJ's decision. The District appealed to the Ninth Circuit Court of Appeals, which affirmed the district court's findings.

While the appeal was pending, the District and the parent discussed possible settlement of the child find issue that had not yet proceeded to hearing. On September 28, 2012, the District presented a settlement offer to parent, including: (1) 80 hours of individual tutoring by a credentialed special education teacher; (2) reimbursement for a private evaluation obtained by parent (3) 20 hours of compensatory counseling services from a credentialed school psychologist; and (4) reimbursement of "reasonable" attorneys' fees and costs. The District's offer also required the terms to "be incorporated into an industry standard general compromise and release agreement that will effectuate the offer outlined . . ."

The parent rejected the offer, and the parties proceeded to hearing on the

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Ricardo R. Silva  
Partner  
San Diego Office  
rsilva@lozanosmith.com



Karin M. Anderson  
Associate  
San Diego Office  
kanderson@lozanosmith.com



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child find claims. The ALJ again found in the student's favor, and awarded him: (1) 6 hours individual counseling by a credentialed mental health professional and (2) reimbursement for the costs of a private evaluation. The parent then filed a motion in federal district court, seeking to recover her attorneys' fees incurred in the due process hearing. The court awarded only \$7,780 in attorneys' fees, finding the parent was not entitled to recover any fees incurred after the date of the District's settlement offer. The parent then appealed this issue to the Ninth Circuit.

Under the IDEA, a court may award "reasonable attorneys' fees" to the parent of a child with a disability who prevails in a due process hearing. (20 U.S.C. 1415 § (i)(3)(B)(i)(I).) However, attorneys' fees and costs may not be awarded for work done after the date of the school district's written settlement offer if the relief parents finally obtained at the hearing is not more favorable to the parents than the settlement offer. As an exception to this rule, a court may award attorneys' fees if the parent was "substantially justified" in rejecting the school district's settlement offer.

In *Beauchamp*, the Ninth Circuit first analyzed whether the relief awarded by the ALJ was more favorable than the District's settlement offer. Here, the parent acknowledged that the District offered more counseling and tutoring hours than the ALJ awarded; however, the parent claimed that the ALJ's relief was still more favorable because it included a ruling that the District violated its child find obligations. The parent claimed this ruling was important to the pending appeal on the expedited portion of the case. The Ninth Circuit rejected this claim, finding that the outcomes of the two pending matters were not dependent upon each other. Moreover, at the time the District made the offer, the student was receiving appropriate special education and related services. The only question was whether the student was entitled to relief for the alleged delay in the District's evaluation process, and the parent had agreed that the District's settlement offer was acceptable. Thus, from the parent's perspective, there was nothing to be gained by rejecting the settlement offer.

The Court next examined whether the parent was "substantially justified" in rejecting the offer. The parent claimed she rejected the offer because it was vague and ambiguous in that it was contingent on development of an "industry standard" agreement. The parent argued it was unclear what rights she would be waiving by accepting the offer, and she should not have been expected to seek clarification of the District's intended terms. The Ninth Circuit disagreed, specifically finding the IDEA did not prevent parent from seeking clarification of the District's intended settlement terms or presenting a counter-offer. Accordingly, the Ninth Circuit affirmed the district court's award of \$7,780 in attorneys' fees.

If you have any questions about this decision and its implications on presenting settlement offers in special education due process hearings, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).