BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

YUBA CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020646

ORDER SHIFTING COSTS FOR ATTORNEY MISCONDUCT

APRIL 5, 2023

On March 22, 2023, in anticipation of a March 27, 2023 prehearing conference, called a PHC, Student filed a PHC statement in this matter. The statement was signed by Sheila Bayne as the only attorney appearing for Student. On March 23, 2023, Yuba City filed a motion to strike Student's PHC statement on the grounds that it did not contain the concise statement of issues required by OAH's Scheduling Order defining the requirements for PHC statements, and that it violated a previous admonition to Student's counsel on the same subject by Administrative Law Judge Chris Butchko in an earlier case. On March 27, 2023, Student filed an opposition to the motion. At the PHC on March 27, 2023, the undersigned granted the motion to strike Student's PHC statement. No one appeared for Student at the PHC.

On March 27, 2023, OAH issued to Student's attorney Sheila Bayne an Order to Show Cause why she should not be sanctioned for repeated violations of OAH's requirement for a concise statement of issues in her PHC statements in this and other cases, and for violating Judge Butchko's admonition. Student filed a Response to the Order to Show Cause on March 28, 2021, supported by declarations from Robert Burgermeister and Lynda Williams, attorneys in Ms. Baynes's law firm. Those declarations addressed the circumstances in which Student's attorneys failed to appear for Student at the March 27, 2023 PHC. That issue has been addressed in a separate order.

APPLICABLE LAW

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 v. Manhattan Beach Unified Sch. Dist*. (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly [Cal. Code Regs., tit. 5] § 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).)

The ALJ presiding at the hearing may order reimbursement either to OAH or to another party. With prior 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 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. Cod 1455.30, 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).) "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.)

ANALYSIS

The declarations from Mr. Burgermeister and Ms. Williams that accompanied Student's Return to the Order to Show Cause did not address Ms. Bayne's repeated violations of OAH's pleading requirement that a PHC Statement must contain a concise statement of issues. Ms. Bayne did not file a declaration of her own or any other statement under oath. In an unsworn memorandum, Ms. Bayne briefly addresses the subject of this Order:

> With regards to any and all PHC statements the record speaks for itself. With the exception of maybe one or 2 PHC statement [sic], any adjustments required by OAH have been

> addressed. No Judge has issued any concern or difficulty in any recent time.
>
> This law firm has an exemplary reputation we are the number one top special education law firm in California. Our client with the assistance of our co-counsel have filed a Petition for Writ of Certiorari in Danielle Howard Martinez, et al. v. Gavin Newsom, in His Official Capacity as Governor of California, et al. This case has already affected 800,000 California Special Students.
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> What this law firm has established, with regards to assisting students with special needs is unprecedented. We continue to seek justice for those students the for the federal court to address any exhaustion issues is that we go through OAH first. And we will continue to abide by all the rules when doing so.

That is Ms. Bayne's entire response to the Order to Show Cause concerning her repeated violation of OAH's pleading requirements and of Judge Butchko's admonition.

Ms. Bayne's response is unsworn, evasive, vague, and inadequate. She states that "with the exception of maybe one or 2 PCH statement [sic], any adjustments required by OAH have been addressed." This makes no sense because OAH does not require "adjustments" in pleadings. And the exception of one or two cases may well make an exception for this case.

Ms. Bayne's response continues: "No Judge has issued any concern or difficulty in any recent time." This statement is false. On January 9, 2023, in OAH Case No. 2022110638, *Student v. Los Angeles Unified School Dist.*, Administrative Law Judge Chris

Butchko filed an Order Following PHC that specifically admonished the Student's attorney in that case, Ms. Bayne, to cease violating OAH's requirement for a concise issues statement in her PHC statements. Judge Butchko wrote:

> Student's law firm has previously been cautioned by OAH about failing to comply with the requirements for a PHC statement. The parties are required to present a simple statement of the issues for hearing, rather than extensive legal argument and citations. Student's PHC statement has cut and pasted large sections of text from the complaint, including argument and legal citations, which is not helpful. Student's law firm was advised at the PHC that future inappropriate PHC statements will be rejected, the PHC and hearing dates will be rescheduled, and other consequences may ensue.

Official notice is taken of the pleadings and orders in OAH Case No. 2022110638.

As Judge Butchko's order states, Student's attorney's violations of OAH's pleading standards are not isolated events. For example, for the same reason the undersigned ALJ has on his own motion previously stricken from the record a noncomplying prehearing conference statement filed by Student's attorney. (*Student v. Pasadena Unified School Dist.*, OAH Case No. 2021080787 (Order Striking Student's Prehearing Conference Statement from Record, Oct. 7, 2021.) Official notice is taken of the pleadings and orders in OAH Case No. 2021080787. It is likely that there have been other examples of this misconduct by Ms. Bayne in other OAH cases.

Ms. Bayne's reference to OAH's requirement of a concise statement issues concludes by boasting that her firm has an exemplary reputation and is the top special

education firm in California. It mentions that the firm, along with co-counsel, have pending a petition for certiorari in the United States Supreme Court in a matter of importance to 800,000 special education students in California. Ms. Bayne's unsworn defense of her conduct concludes by asserting that her firm will continue to fight for justice to special education students and will "continue to abide by all the rules" when doing so. It is not necessary to evaluate these claims because they are irrelevant to the issues raised by the Order to Show Cause.

In short, Ms. Bayne's unsworn defense of her conduct is no defense at all. It pretends that this is the first time a judge has recently criticized her compliance with OAH pleading standards, and does not mention Judge Butchko or his admonition at all. It shows no recognition that she has ever violated OAH pleading standards or has any intention of changing her ways. Instead, it asserts that she will "continue to abide by all the rules." However, Ms. Bayne has already contradicted this assertion by filing another noncomplying PHC statement in this matter on March 29, 2023. (See Order Following Prehearing Conference Striking Parts of Student's Complaint, filed April 3, 2023, at pp. 4-5.)

FINDINGS

Attorney Bayne, in her drafting and filing of Student's PHC Statement on March 22, 2023, knowingly and deliberately violated both OAH pleading requirements for a concise statement of issues and Judge Butchko's recent admonition. These violations were not isolated, but were instead part of a pattern of misconduct by Ms. Bayne. Ms. Bayne has declined to substantively respond to the March 27, 2023 Order to Show Cause, but instead has filed only an unsworn statement boasting of her firm's accomplishments, falsely pretending that she has not been recently admonished for this conduct, and not mentioning Judge Butchko's admonition at all. She has then

compounded these offenses by filing yet another nonconforming issues statement in this matter on March 29, 2023, after its predecessor had been stricken and after the issuance of the Order to Show Cause. These filings by Ms. Bayne were made in bad faith and were frivolous under applicable law.

It is apparent from the pleadings on file in this matter, the Order to Show Cause issued on March 27, 2023, and the Return to the Order to Show Cause, that Ms. Bayne will continue to defy Judge Butchko's admonition and OAH's pleading requirements unless OAH takes further action. Therefore, the reasonable costs to Yuba City of researching and preparing its Motion to Strike Petitioner's Prehearing Conference Statement, including the accompanying declaration, will be shifted to Ms. Bayne personally. These costs will include Yuba City's reasonable costs for attending the PHC on March 27, 2023, which lasted about one quarter of an hour but wholly concerned the granting of Yuba City's Motion to Strike and related scheduling matters.

ORDER

1. Attorney Sheila Bayne shall reimburse Yuba City for all the reasonable costs of preparing and filing its Motion to Strike Petitioner's Prehearing Conference Statement, filed March 23, 2023, and its attendance at the March 27, 2023 PHC, including costs of personnel.
2. Within seven days of the date of this Order, Yuba City shall file one or more declarations setting forth its reasonable expenses incurred in preparing and filing its Motion to Strike Petitioner's Prehearing Conference Statement, filed March 23, 2023, and its attendance at the March 27, 2023 PHC. The expenses shall be stated separately and specifically identified.
3. Ms. Bayne may file a response to Yuba City's accounting of expenses within three business days of its filing.

4. OAH will determine the amount of the costs shifted by this Order based on Yuba City's accounting of expenses and any response to it.

Charles Marson

Charles Marson

Administrative Law Judge

Office of Administrative Hearings