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 FOLLOWING PREHEARING CONFERENCE GRANTING MOTION TO STRIKE STUDENT'S PREHEARING CONFERENCE STATEMENT AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

MARCH 27, 2023

On March 27, 2023, Administrative Law Judge Charles Marson, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

There was no appearance for Student. Dee Anna Hassanpour and Anisha Asher, Attorneys at Law, appeared on behalf of the Yuba City Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO STRIKE STUDENT'S PHC STATEMENT FOR NONCOMPLIANCE WITH OAH PLEADING REQUIREMENTS

On March 22, 2023, Student filed a prehearing conference statement in this matter. On March 23, 2023, Yuba City filed a motion to strike Student's statement on the ground that it did not contain the concise statement of issues required by OAH's Scheduling Order defining the requirements for prehearing conference statements. On March 27, 2023, Student filed an opposition to the motion.

The statement of issues in Student's PHC statement is 10 pages long and consists of a mixture of factual claims, extensive briefing of legal generalities concerning the Individuals With Disabilities Education Act, boilerplate factual recitals of official actions during 2020 in response to the COVID pandemic, excerpts from various individualized education programs, and efforts at persuasion akin to those found in a brief. It is not useful in the ALJ's the formulation of issues in the Order Following Prehearing Conference, which is required to specify and limit the issues to be raised in the hearing. Those issues may only include issues raised in Student's complaint. (20 U.S.C. § 1415(f)(3)(B).) Student's 27-page complaint contains the same mixture of factual claims, legal arguments, quotations from documents, and other extraneous matters, and is extremely repetitive. It is vague in important allegations.

Defining the actual issues in this matter is particularly difficult because the complaint sets forth numerous statements that look like legal claims, but in a subsequent pleading by Student are alleged not to be legal claims. This matter was filed on February 16, 2023, and is subject to a two-year statute of limitations. (Ed. Code, sec. 56505, subd. (l).) The complaint makes many allegations of legal violations by Yuba City before February 16, 2023. On March 21, 2023, Yuba City moved to dismiss several of those claims as time-barred and Student responded that the many allegations of alleged illegalities by Yuba City before February 16, 2023, are not really claims but were pled for other purposes. That makes it impossible to know with any confidence what it is that Student regards as a claim.

A specific statement of issues in an Order Following PHC is therefore unusually important in this matter, and cannot responsibly be written on the current state of the record.

Yuba City's motion to strike is also based on the allegation that, in the instant matter, Student's counsel is violating an admonition by OAH Administrative Law Judge Chris Butchko in a different special education matter. Yuba City's moving papers show that on January 9, 2023, in OAH Case No. 2022110638, *Student v. Los Angeles Unified School District*, Administrative Law Judge Chris Butchko filed an Order Following PHC that specifically admonished Student's counsel 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, Counsel's violation of OAH's pleading standards is not an isolated event. The undersigned ALJ has on his own motion previously stricken from the record a noncomplying prehearing conference statement filed by counsel for the same reason. (*Student v. Pasadena Unified School Dist.* (Oct. 7, 2021) (Order Striking Student's Prehearing Conference Statement from Record).)

Student's opposition to the motion to strike is disingenuous and wholly unpersuasive. It cites statutes and rules of court that do not apply to special education due process hearings, claims that the disputed statement of issues in this matter is the product of careful editing, and denounces Yuba City's attorney for allegedly acting in bad faith in making the motion to strike. Its only response to the charge of disregarding Judge Butchko's admonition is that an oral admonition is not "precedent." Student's counsel entirely disregards the fact that the admonition is also in Judge Butchko's written order.

For the above reasons, Yuba City's motion to strike is granted.

ORDER

1. Student may have until the close of business on March 28, 2023, to file a PHC statement that complies with OAH's requirements. Any such statement that is untimely or not in compliance with those requirements will be disregarded.

2. The prehearing conference is continued for one week, until 10:00 a.m. on April 3, 2023. The due process hearing is continued for one week, until April 11, 12 and 13, 2023.
3. A separate order to show cause will be issued in this matter requiring Student's counsel to explain this matter should not be dismissed, or other sanctions levied, for her ongoing violations of the requirement of a concise statement of issues.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings