BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT AND

TRACY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110151

ORDER SETTING HEARING ON MOTION FOR SANCTIONS AND BRIEFING SCHEDULE

DECEMBER 27, 2023

Student filed and served Student's due process hearing request in this matter with the Office of Administrative Hearings, called OAH, on October 31, 2023, naming Stockton Unified School District, referred to as Stockton, and Tracy Unified School District, referred to as Tracy. OAH scheduled the prehearing conference in this matter for December 11, 2023, and the due process hearing for December 19, 20 and 21, 2023.

On December 18, 2023, Stockton filed a Motion for Sanctions against Student's attorneys, the Law Offices of Sheila C. Bayne, Esq., and Sheila Bayne, on grounds that Student's attorneys had engaged in bad faith actions and tactics. The motion was based

on Student's failure to follow OAH's PHC Order directing the parties to participate a prehearing meet and confer no later than December 14, 2023, at 3:00 pm to discuss witness scheduling, exhibits for hearing, and possible stipulations regarding facts, contentions, resolutions and the authenticity and admissibility of exhibits.

In the supporting declaration of Stockton's attorney Dee Anna Hassanpour, Hassanpour declared that Hassanpour and Tracy's attorney Krista Tidwell had worked together on December 14, 2023 to draft and revise a proposed witness schedule. Hassanpour emailed Student's attorneys Sheila Bayne, Constance Zarkowski and Peter Collisson, all from the Law offices of Sheila Bayne, on December 14, 15, and 18, 2023 seeking to conduct the meet and confer ordered by the ALJ at the December 11, 2023, prehearing conference. Hassanpour declared she received no response from Student's attorneys. Stockton's motion requested an order from OAH finding good cause to shift Stockton's expenses to the Law Offices of Sheila C. Bayne, Esq., and Sheila Bayne, based on their failure to prosecute the present matter, and tactics unnecessarily delaying litigation, and increasing the costs of litigation.

Stockton's motion did not identify the nature and amount of the expenses sought.

Student has not responded to Stockton's motion for sanctions.

On December 19, 2023, at 6:20 AM, Student's attorney Sheila Bayne filed Notice of Withdrawal Without Prejudice of Complaint and Request for Due Process, and OAH vacated the hearing set to start at 9:30 AM the same day. Student's Notice of Withdrawal provided no explanation of the reasons Student withdrew their due process hearing request, or why they waited to file it until just before the start of the hearing.

APPLICABLE LAW

In certain circumstances, an ALJ presiding over a special education proceeding may 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, §§ 11405.80, 11455.30; Cal. Code Regs. tit. 1, §1040.) Actions or tactics include, but are not limited to, filing and serving a complaint and making or opposing motions. (Gov't Code § 11455.30, subd. (a).) Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (*Ibid*; 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.)

ORDER

- Stockton's Motion for Sanctions will be heard on January 12, 2024, at 3:00 PM.
- The last day for Stockton to file and serve a supplemental brief and supporting declarations setting forth the nature and amount of the expenses it is seeking in its motion for sanctions is January 4, 2024.
- Any additional motions by Stockton or Tracy for sanctions also must be filed and served on or before January 4, 2024, at 5:00 PM.

- Student's response to any motion for sanctions must be filed and served on or before January 10, 2024, at 5:00 PM.

IT IS SO ORDERED.



Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings