

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050096

ORDER SHIFTING OAH EXPENSES TO ATTORNEYS FOR  
STUDENT

AUGUST 28, 2024

On May 2, 2024, Student filed a request for due process, called a complaint, with the Office of Administrative Hearings, called OAH, naming Stockton Unified School District, called Stockton. This will be referred to as Student's case. OAH issued a scheduling order, also on May 2, 2024, setting the due process hearing in Student's case to begin on June 18, 2024.

Also on May 2, 2024, Student's counsel filed a complaint in a case for one of Student's siblings. OAH designated that matter OAH Case No. 2024050098, called Sibling A's case. OAH issued a scheduling order in Sibling A's case also on May 2, 2024, setting that due process hearing to begin on June 11, 2024.

Further on May 2, 2024, Student's counsel filed a complaint for another of Student's siblings. OAH designated that matter OAH Case No. 2024050109, called Sibling B's case. OAH issued a scheduling order in Sibling B's case also on May 2, 2024, setting that due process hearing to begin on June 25, 2024, and the hearing did commence on that date.

Finally on May 10, 2024, Student's counsel filed a complaint for another of Student's siblings. OAH designated that matter OAH Case No. 2024050547, called Sibling C's case. OAH issued a scheduling order in Sibling C's case on May 15, 2024, setting that due process hearing to begin on June 25, 2024.

## STUDENT'S COUNSEL FAILED TO ACKNOWLEDGE AND TAKE TIMELY ACTION REGARDING THE CONFLICT IN HEARING DATES

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Thus, resolving the due process request quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Attorney Sheila Bayne signed all three May 2, 2024 complaints, which Ms. Bayne decided to file all on the same date. All three May 2, 2024 complaints requested eight days for the student to present their case in chief. All three scheduling orders required the parties to file any prehearing motions, including requests for continuance, no later than three business days prior to the prehearing conference.

On May 31, 2024, OAH held a prehearing conference in Sibling A's case. Sibling A in their Prehearing Conference Statement again requested eight hearing days. Attorneys Ryan Song, Addison Morris, and Michelle Wilkolaski appeared at the prehearing conference on behalf of Sibling A. Song identified himself as lead counsel. Student's counsel did not request a continuance of Sibling A's case or raise concerns regarding the timing of Student's case possibly conflicting with Sibling A's case. At the May 31, 2024 Prehearing Conference, OAH set the hearing for Sibling's A's case to start on June 11, 2024, and on June 4, 2024, OAH issued the Prehearing Conference Order.

On June 7, 2024, OAH held the prehearing conference in Student's case. Song and Morris appeared at the prehearing conference on behalf of Student. Song again identified himself as lead counsel. Student's counsel did not request a continuance of Student's due process hearing or raise concerns regarding the timing of Student's case possibly conflicting with Sibling A's case. Different Administrative Law Judges held the prehearing conferences for Student's case and Sibling A's case and were not aware of the impending conflict.

On June 13, 2024, Student untimely filed a request to continue Student's due process hearing. This was two days after the hearing in Sibling A's case had begun for which Student's and Sibling A's counsel had requested eight days of hearing. Student's motion argued that Student demonstrated good cause for the continuance, due to Parent wishing to be present at both Student's due process hearing and sibling's due process hearing, which had begun on June 11, 2024, and was still underway. Student's motion implied that the need for the continuance had only recently come to fruition, such that the late filed motion was excusable. That was not true.

Student's counsel knew or should have known for weeks that there was a potential, if not actual, conflict between the dates scheduled for Student's matter and Sibling A's case. Student's complaint and prehearing conference statement included an estimate that she would need eight days to present her case in chief. This is the same estimate Student's counsel made in Sibling A's complaint and prehearing conference statement.

During both prehearing conferences, Song confirmed the eight-day estimates for both hearings. The initial dates for Sibling A's hearing were June 11-13, 2024, and Student's case was set for June 18-20, 2024. There were no continuances requested for either matter. Thus, Student's counsel all knew or should have known that there would be a conflict in the hearing dates between Student's matter and Sibling A's case no later than Sibling A's prehearing conference on May 31, 2024. Even if this failed to occur by May 31, 2024, by Student's prehearing conference on June 7, 2024, the conflict was clear.

Finally, on June 6, 2024, Stockton filed a request for continuance in Sibling C's case, due in part to concerns that Parent would not be able to appear in the hearing in both Sibling B's case and Sibling C's case, which OAH granted and issued on June 12, 2024. On June 11, 2024, Bayne filed an opposition and accompanying declaration inexplicably arguing that Parent being "double-booked" with simultaneous hearings in Sibling B's and Sibling C's cases was not good cause to continue Sibling C's hearing. On June 12, 2024, OAH issued the order granting Stockton's continuance request.

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## THE ORDER TO SHOW CAUSE AND STUDENT'S COUNSELS' RESPONSE

On June 14, 2024, the undersigned granted the motion to continue Student's case for the sole reason that Parent has a right to appear at both of her children's due process hearings. The undersigned further found that Student's counsels' carelessness in managing the calendars in both hearings should not be held against Parent, because courts do not generally impose sanctions against clients for the "sins of their attorneys." (See e.g. *Dible v. City of Chandler* (9th. Cir 2007) 242 Fed.Appx. 473.)

Nevertheless, Student's counsels' behavior raised significant concerns regarding their diligence in managing their calendar and with their candor toward OAH. Recognizing an Administrative Law Judge's duty to address attorney misconduct under Canon 3 D (2) of the California Code of Judicial Ethics, the undersigned issued an Order to Show Cause Why Student's Counsel Should not be Sanctioned. In that order, the undersigned instructed Attorneys Bayne, Song, and Morris, all from the Law Offices of Sheila C. Bayne, Esq., to respond as follows:

Student is ordered to file a written response to the Order to Show Cause with OAH by no later than 5:00 p.m. on June 19, 2024. The response shall address why OAH should not order Student's attorneys to pay OAH's expenses and Stockton's expenses. In addition to any legal argument, the response shall include declarations made under penalty of perjury by Bayne, Song, and Morris containing a factual explanation regarding when the Parent was notified that the two hearings were going to overlap and the consequences of such, Student's counsels' apparent attempt to

mislead OAH regarding the circumstances of Student's request for continuance described above, and why Student did not request a continuance following the sibling's prehearing conference on May 31, 2024, timely prior to Student's June 7, 2024 prehearing conference, or any other time prior to June 13, 2024. Student shall timely serve its written response on counsel for Stockton. Student's failure to respond may result in sanctions without further opportunity to be heard.

On June 19, 2024, Student filed an incomplete response to the June 14, 2024 Order to Show Cause, and sworn declarations by Bayne, Song, and Morris.

On June 20, 2024, following a review of the response and declarations, the undersigned ordered Bayne, Song, and Morris to appear for a videoconference hearing on the June 14, 2024 Order to Show Cause at 10:00 a.m. on June 28, 2024.

Present at the June 28, 2024 hearing were Bayne and Song, as well as Attorneys Dee Anna Hassanpour and Rebecca Diddams on behalf of Stockton. Notably absent was Morris, despite the undersigned's clear order for her to appear. The undersigned heard argument regarding reconsideration of the June 14, 2024 Order which granted Student's motion to continue. OAH issued an order on that portion of the June 28, 2024 hearing on July 1, 2024.

During the hearing, the undersigned took sworn testimony from all persons in attendance. As discussed in detail below, Bayne's and Song's testimony did not ease the undersigned's concerns regarding their candor toward OAH and their diligence in

managing their calendar. As discussed in detail below, their testimony contained further evasions, half-truths, and false statements. When confronted, neither could provide clear or convincing explanations for their conduct.

The undersigned took the matter of cost shifting under submission and now issues the following Order.

## STUDENT'S COUNSELS' FAILURE TO TIMELY RECOGNIZE THE NEED FOR A CONTINUANCE, TIMELY REQUEST A CONTINUANCE, AND FULLY DISCLOSE THE FACTS SURROUNDING THE REQUEST WARRANTS COST SHIFTING

In certain circumstances, an Administrative Law Judge, known as an ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to the Office of Administrative Hearings. (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 Administrative Law Judge, called an 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).) This authority is analogous to that of a judge pursuant to Code of Civil Procedure, section 128.5.

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).)

Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, or employees. (Code Civ. Proc., § 128.5, subd. (f)(1)(C).) An order of sanctions shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. (Code Civ. Proc., § 128.5, subd. (f)(2).) If warranted for effective deterrence, an order may direct payment of some or all of the reasonable attorney’s fees and other expenses incurred as a direct result of the action or tactic. (*Ibid.*) The courts shall vigorously use their sanction authority to deter improper actions or tactics. (Code Civ. Proc., § 128.5, subd. (g).)



"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. (*In re Marriage of Sahafzadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124, 138 (*Taeb*) [citing *West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702]; see also *Campbell v. Cal-Gard Sur. Services, Inc.* (1998) 62 Cal.App.4th 563, 574, 73 Cal.Rptr.2d 64 ["[a]n evil motive is not required; subjective bad faith may be inferred from the prosecution of a frivolous action"]; *Summers v. City of Cathedral City* (1990) 225 Cal.App.3d 1047, 1072, 275 Cal.Rptr. 594 [bad faith "means simply that the action or tactic is being pursued for an improper motive"].)

The law requires that attorneys not take an action which unreasonably or unnecessarily injures the opposing counsel or party, even if on technically correct legal ground. (*Taeb, supra*, 39 Cal.App.5th at p. 138; see also *West Coast Development, supra*, 2 Cal.App.4th at p. 702.) A court may shift costs if it, "becomes satisfied that [the party] abused not only the opposing party and counsel but the courts as well." (*Taeb, supra*, Cal.App.5th at p. 139 [citing *West Coast Development, supra*, 2 Cal.App.4th at p. 704].)

An attorney is an officer of the court and owes the court a duty of candor. (*Levine v. Berschneider* (2020) 56 Cal.App.5th 916, 921 [citing *In re Reno* (2012) 55 Cal.4th 428, 510, 146 Cal.Rptr.3d 297, 283 P.3d 1181 [superseded by statute on other grounds]; *Roche v.*

*Hyde* (2020) 51 Cal.App.5th 757, 817, 265 Cal.Rptr.3d 301].) The California State Bar Rules of Professional Conduct state, “[a] lawyer shall not ... knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” (California Bar Rules Prof. Conduct, rule 3.3(a)(1).) Section 6068 of the Business and Professions Code explains that every attorney has a duty “never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.” (Bus. & Prof. Code, § 6068, subd. (d)).)

The duty of candor is not simply an obligation to answer honestly when asked a direct question by the trial court but includes an affirmative duty to inform the court when a material statement of fact or law has become false or misleading in light of subsequent events. (*Levine, supra*, 56 Cal.App.5th at 921[citing *In re Reno, supra*, 55 Cal.4th at pp. 510-511, 146 Cal.Rptr.3d 297, 283 P.3d 1181 [duty to inform court when a claim in a writ petition is subject to a procedural bar]; *Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 990, 240 Cal.Rptr.3d 861 [duty to acknowledge contrary authority]; *Jackson v. State Bar of California* (1979) 23 Cal.3d 509, 513, 153 Cal.Rptr. 24, 591 P.2d 47 [“The representation to a court of facts known to be false is presumed intentional and is a violation of the attorney's duties as an officer of the court”]).)

The law draws no distinction, “among concealment, half-truth, and false statement of fact.” (*Grove v. State Bar of California* (1965) 63 Cal.2d 312 [citing *Green v. State Bar of California*, 213 Cal. 403, 405, 2 P.2d 340]; see also *Pickering v. State Bar of California*, 24 Cal.2d 141, 145, 148 P.2d 1, 3) [“It is the endeavor to secure an advantage by means of falsity which is denounced.”].)

The State Bar Act and the Rules of Professional Conduct apply to proceedings before the Office of Administrative Hearings. OAH is a “court” within the meaning of Business and Professions Code section 6103, which authorizes sanctions for an attorney’s dereliction of duties. (*Matter of Moriarty* (Cal. Bar Ct., Apr. 20, 2017) 5 Cal. State Bar Ct. Rptr. 511, 522-523.)

California Bar Rules Prof. Conduct, rule 1.3 states, “A lawyer shall not intentionally, repeatedly, recklessly, or with gross negligence, fail to act with reasonable diligence in representing a client.” Attorneys have a fiduciary duty to their clients to “maintain adequate management and accounting procedures for the proper operation of a law office ...” (*In re Valinoti* (Cal. Bar Ct., Dec. 31, 2002) 2002 WL 31907316 at p. 15; 03 Cal. Daily Op. Serv. 1322002.) “At a minimum, respondent was required to develop and maintain procedures for ... calendaring court hearings and filing deadlines [and] tracking court hearing dates and filing deadlines to insure they are not missed ...” (*Ibid.*)

Student’s counsels’ actions warrant cost shifting for two reasons, each of which are sufficient on their own to justify cost shifting. First, Student’s counsel failed to diligently manage its calendar and timely request a continuance in Student’s matter, when it had been clear for weeks that a continuance would be required. When Student’s counsel finally requested a continuance, it did so without following OAH’s orders regarding the timing of prehearing motions, and based that request on misrepresentations and half-truths, which sought to impermissibly manipulate OAH’s calendar and to harass Stockton.

Second, Student’s counsel demonstrated a significant lack of candor toward OAH though the June 13, 2024 request for continuance, including its accompanying declaration, Student’s June 19, 2024 response to the June 14, 2024 Order to Show Cause, including the

accompanying declarations, and Student's counsels' sworn testimony at the June 28, 2024 hearing on the Order to Show Cause. Each of these episodes of misconduct are discussed in detail below.

## STUDENT'S COUNSEL ACTED IN BAD FAITH BY WAITING TO REQUEST A CONTINUANCE IN THIS CASE

Nearly every aspect of Student's June 13, 2024 request for continuance warrants cost shifting. The circumstances surrounding the continuance were entirely within Student's counsels' control, yet counsel repeatedly failed to act when it would have been reasonable to do so. Instead, counsel waited until the 11th hour to request a continuance of Student's hearing, despite previous opportunities to alert opposing counsel and OAH that Student would not be prepared to proceed with the due process hearing as scheduled.

Student's counsel currently represents four of Student's siblings in currently filed matters before OAH. All name Stockton as respondent. Student's counsels' conduct in all of these additional matters is necessary to address the pending matter of cost shifting. OAH may take official notice of the entire administrative record for another OAH matter, including the docket, filings, recordings of proceedings, and decisions. (*Hogen v. Valley Hospital* (1983) 147 Cal. App. 3d 119, 125; Evid. Code § 452(c).) The undersigned takes official notice of all portions of the official record in OAH Case Nos. 2024050098 (Sibling A's case), 2024050109 (Sibling B's case), and 2024050547 (Sibling C's case).

Student's counsel filed three due process complaints against Stockton on the same day, May 2, 2024. These matters included Student's matter, Sibling A's case and Sibling B's case. Bayne signed each complaint. Student's counsel filed Sibling C's case on May 10,

2024. In each of the complaints, Student's counsel requested eight days to present their case in chief. OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Thus, resolving the due process hearing quickly is legally required.

OAH issued scheduling orders for each matter filed on May 2, 2024, the same day. OAH must schedule matters consistent with the applicable legal timelines for resolving due process complaints. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) While OAH endeavors to schedule sibling matters such that they do not overlap, OAH cannot schedule matters beyond the legally prescribed timelines. (*Ibid.*) The parties are responsible for requesting a continuance should one be necessary. (*Ibid.*) Therefore, consistent with OAH scheduling protocols for scheduling hearings to begin on a Tuesday, and initially scheduling three hearing dates, OAH set hearing dates as follows:

- Sibling A's case – June 11, 12, and 13, 2024;
- Student's case – June 18, 19, and 20, 2024;
- Sibling B's case – June 25, 26, and 27, 2024; and
- Sibling C's case – June 25, 26, and 27, 2024.

Based on Student's counsels' request for eight days to present their case in chief for each matter, the conflict between Sibling A's case and Student's case was immediately apparent. Student's counsel had no reasonable excuse for not recognizing this conflict upon review of the scheduling orders in each matter. (*In re Valinoti, supra*, 2002 WL 31907316 at p. 15; see also Rules. Prof. Conduct, rule 1.3 (Diligence).) This is not a situation where the law firm filed three cases in one day for unrelated students such that, as long as the firm had available attorneys, the hearings could go forward on the same dates.

Nevertheless, Student's counsel did not immediately act to address the apparent scheduling conflict between Sibling A's case and Student's case. Student's counsel further compounded this error by reiterating the eight day estimate for their case in chief for each matter's prehearing conference statement, and at the prehearing conference, called a PHC, for each matter. Moreover, when Stockton requested a continuance in Sibling C's case, due to the conflict with Sibling B's case, Student's counsel objected to that continuance.

In their June 19, 2024 response and during the June 28, 2024 hearing, Student's counsel repeatedly argued that Student's estimate of eight days for her case in chief was not "set in stone" and was "fluid" based on the flow of testimony. The implication being that the trajectory of hearing was not entirely within Student's counsels' control. While this may be true, the time Student would need to present her case in chief is entirely within her control, because she is responsible for arranging her own witnesses, preparing those within her control, and preparing questions in advance of the due process hearing. Had Student's counsel undertaken these basic tasks, something that is not at all clear based on how Student's counsel have acted in this matter, then the estimate for hearing days would have doubtlessly been more accurate. Thus, Student's counsels' argument rings hollow.

Even if the eight-day estimate was thoughtfully and diligently developed, Student's counsels' subsequent behavior still warrants cost shifting. At the May 31, 2024 prehearing conference for Sibling A's case, Song did not alert the ALJ presiding over the PHC to the possible scheduling conflict with Student's matter which was set to begin the week after the three hearing days initially set for Sibling A's case. Similarly, Song did not alert the ALJ presiding over Student's June 7, 2024 PHC of the possible scheduling conflict with Sibling A's case. Different ALJs held the prehearing conferences for Student's case and Sibling A's case and were not aware of the impending conflict.

The due process hearing for Sibling A's case, began as scheduled on June 11, 2024. Song appeared as counsel in Sibling A's case. The ALJ presiding over that matter ordered the parties to develop a joint witness schedule for the entire hearing and to provide that schedule to the ALJ, something which the parties were previously ordered to do at the PHC. During the June 28, 2024 hearing, counsel for Stockton credibly testified that they had attempted to develop this joint schedule, but Student's counsel had failed to cooperate.

The parties presented the joint schedule on June 12, 2024. The schedule had witnesses set to appear throughout the three days initially calendared for the Sibling A's case, and for four additional hearing days. Once again, Student's counsel was faced with the looming scheduling conflict and failed to act.

While Student's request would have been untimely at the beginning of Sibling A's hearing, Student did not even make the request at that late hour. It was not until 11:44 AM, mid-way through the third day of Sibling A's hearing, and less than three business days before Student's hearing was to begin, did Student's counsel move to continue the due process hearing in Student's case. Even though Student's failure to adhere to OAH's orders regarding the filing of prehearing motions was sufficient reason to deny Student's motion, the undersigned exercised his discretion to consider Student's untimely motion so not to unduly prejudice Parent.

In her motion to continue, Student asserted that the dates in sibling matter OAH Case No. 2024050098 "will very likely conflict" with the dates then set for Student's due process hearing. Student also argued that the conflict was an "excusable circumstance" because "the projected hearing dates for [Sibling A's case] were originally June 11-13, 2024, but the hearing for that matter will need additional days, and will carry over into

June 18, 2024.” Student’s motion, and Bayne’s attached declaration, sought to create the illusion that the conflict in dates was something unforeseeable and beyond Student’s counsels’ control because Sibling A’s case should have been completed in the scheduled three hearing days. Bayne and Song reiterated this assertion during their testimony at the June 28, 2024 hearing, seemingly blaming OAH for how it sets initial hearing dates, and that it would be impossible “prior to having the evidence uploaded by both sides, and certainly not prior to the meet and confer, where we can even really tell how long a hearing is going to take.”

However, the record shows that this conflict was entirely foreseeable and avoidable, had Student’s counsel engaged in a modicum of diligent planning. Given the consistent assertion that Sibling A would need eight days to present their case in chief, Student’s counsel cannot credibly argue that Sibling A’s case was “projected” to only take the three days initially scheduled by OAH. Rather, Student’s counsels’ responses at the June 28, 2024 hearing serve as an admission of their failure to diligently and competently prepare for hearing and prosecute Student’s matter. Alternatively, Student’s counsels’ actions can be viewed as an improper litigation tactic by seeking to coerce a settlement through improper manipulation of OAH’s calendar. Moreover, Student’s counsels’ stated concern for Parent participating in the hearings in both Sibling A’s case and Student’s case rings hollow.

On June 6, 2024, Stockton filed a request for continuance in Sibling C’s case, due in part to concerns that Parent would not be able to appear in the hearing in both Sibling B’s case and Sibling C’s case. Bayne filed an opposition and accompanying declaration inexplicably arguing that Parent being “double-booked” with simultaneous hearings in Sibling B’s and Sibling C’s cases was not good cause to continue Sibling C’s hearing.



Bayne also argued that Stockton's timely request for continuance was improper because "[Stockton] knew about the complaint since May 13, 2024." However, Stockton's request for continuance was timely in light of Stockton's duty to file that motion no later than June 11, 2024, three business days prior to the June 14, 2024 PHC in Sibling C's case.

Considering Student's counsels' position regarding Student's continuance, Bayne's arguments in opposing Stockton's motion to continue the hearing in Sibling C's case are startling. It is impossible to align Student's counsels' conflicting positions and declarations in both matters. This paradox critically undermines Student's counsels' representations, arguments, and testimony throughout Student's matter.

In their written responses, as well as at the June 28, 2024 hearing, Student's counsel repeatedly argued that their actions were not misconduct, because the undersigned granted Student's request for continuance. However, the undersigned's exercise in discretion to not punish Parent for Student's counsels' errors does not absolve Student's counsel of wrongdoing.

Attorneys may be sanctioned for actions or tactics such as what Student's counsel have engaged in here. (*Taeb, supra*, 39 Cal.App.5th 124.) In *Taeb*, the offending attorney represented to the court that she was ready to begin trial as scheduled. (*Ibid.* at p. 128.) However, that attorney failed to appear in court on the scheduled date. (*Ibid.* at p. 129.) That attorney claimed that she was unexpectedly still in trial in another matter, in part because her client unexpectedly decided to testify which extended the trial by several additional days. (*Ibid.*) The trial court granted a brief continuance per the offending attorney's request. (*Ibid.* at p. 30)

The court then sanctioned the attorney and her client for needlessly delaying the trial and engaging in bad faith tactics. (*Taeb, supra*, 39 Cal.App.5th at pp. 130-131.) The court specifically found that, prior to the trial readiness conference, the offending attorney was already aware of her client's intent to testify in the other matter and knew that the other trial would not conclude when that attorney had anticipated it would. (*Ibid.* at p. 132.) Nevertheless, that offending attorney represented to the court that the trial would proceed as scheduled and failed to either advise the court of the conflict or timely move to continue the trial. (*Ibid.*)

On appeal, the court's sanctions order was upheld against the offending attorney. (*Taeb, supra*, 39 Cal.App.5th 124.) The offending attorney argued that she was sanctioned for, "circumstances beyond her control, i.e., that she found herself caught in a trial running longer than anticipated, a circumstance that could befall any lawyer." (*Ibid.* at p. 141.) However, the court did not impose sanctions for circumstances outside of that attorney's control, but for those within her control. (*Ibid.*)

The appeals court specifically noted that the offending attorney, "affirmatively misrepresented to the court that she was ready to proceed on the scheduled trial date ... when she knew her client in the [other] case had unexpectedly decided to testify, knew that the [other] trial had not concluded when she had anticipated it would, and knew it was exceedingly unlikely she would be able to appear on the scheduled trial date in the instant case." (*Taeb, supra*, 39 Cal.App.5th at pp. 141-142.)

The appeals court further noted that the offending attorney, “thereafter made no attempt to apprise the court of her looming trial conflict and correct what she had previously represented.” *Ibid* at p. 142.)

In her defense, the offending attorney claimed that she made the motion to continue “at the first available opportunity.” (*Taeb, supra*, 39 Cal.App.5th at p. 142.) However, the court found this assertion was a further misrepresentation, finding that she had waited for the 11th hour, when the case was called for trial, to request a continuance. (*Ibid.*) The appeals court found bad faith conduct in the offending attorney’s apparent “nonchalance” toward her trial obligations, failure to comply with the court’s pretrial order, and overall handling of the trial dates. (*Ibid.*) The appeals court determined:

we have no difficulty concluding [the attorney’s] conduct can support sanctions under [Code of Civil Procedure] section 128.5. Her misrepresentation to the court about her readiness for trial, and her failure to correct that misrepresentation at any point during the 10 days before trial, were, by any measure, unjustifiable derelictions in her obligations to the court, as well as to opposing counsel, and thus constituted “frivolous” conduct. This record is also sufficient to support a finding that [the attorney] engaged in this misconduct for an improper motive— to manipulate the court and to manipulate and harass the opposing party—and thus acted in subjective bad faith. (*Taeb, supra*, 39 Cal.App.5th at p. 142.)

Here, Student's counsels' conduct in this matter lines up almost exactly with that of the offending attorney in *Taeb*. Student's counsel failed to alert OAH to the possibility of the pending conflict at either the May 31, 2024 PHC in Sibling A's case or at the June 7, 2024 PHC for Student's case. In fact, Student's counsel did not alert OAH to the conflict at any point in time prior to midday on June 13, 2024.

Like the offending attorney in *Taeb*, Student's counsel argue that they were accused of misconduct for circumstances outside their control, namely the hearing in Sibling A's case running longer than expected. Student's counsels' argument here is equally unavailing. As explained above, Student's counsels' misconduct was entirely within its control, and entirely foreseeable. As with the attorney in *Taeb*, Student's counsel is called to account for misconduct entirely within their control.

Student's counsel also did not comply with the June 7, 2024 prehearing conference order, which instructed the parties to provide a joint proposed witness schedule on the first day of hearing. Overall, Student's counsel was "nonchalant" with their duties toward OAH. Considering the totality of the circumstances, the undersigned finds that Student's counsel engaged in unjustifiable derelictions in their obligations to the court, as well as to opposing counsel. No reasonable attorney would have acted this way. Student's counsels' conduct related to the June 13, 2024 continuance request was therefore frivolous. (*Taeb*, *supra*, 39 Cal.App.5th at p. 142.)

When Student did ask for a continuance, the request contained misrepresentations and half-truths, which counsel repeated under oath at the June 28, 2024 hearing. Student's counsel did not explain why Student did not request a continuance earlier, when the conflict had been clear for weeks. While Student's counsels' repeated lack of candor is

discussed in detail below, the significant misrepresentations do little to support Student's counsels' position that they should not be responsible for paying OAH's costs. Rather, they prove Student's counsel's behavior was a misguided and vexatious litigation tactic. Student's counsel engaged in this misconduct for an improper motive, specifically to manipulate OAH and to manipulate and harass Stockton. Thus, Student's counsel has acted in subjective bad faith. (*Taeb, supra*, 39 Cal.App.5th at p. 142.) Therefore, Student's counsel has engaged in misconduct that warrants the cost shifting ordered below. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088.)

## BAYNE'S AND SONG'S REPEATED LACK OF CANDOR TO OAH WARRANTS COST SHIFTING

Throughout the June 13, 2024 request for continuance, Student's June 19, 2024 response to the undersigned's June 14, 2024 Order to Show Cause, as well as during the June 28, 2024 hearing, Bayne and Song repeatedly demonstrated a significant lack of candor to OAH. Moreover, when confronted with these misrepresentations and omissions of critical facts, Bayne and Song failed to correct them, and in some cases, followed them up with more misrepresentations.

California State Bar Rules of Professional Conduct state, "[a] lawyer shall not ... knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." (California Bar Rules Prof. Conduct, rule 3.3(a)(1).) Section 6068 of the Business and Professions Code explains that every attorney has a duty "never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." (Bus. & Prof.

Code, § 6068, subd. (d)].) OAH is a “court” within the meaning of Business and Professions Code section 6103, which authorizes sanctions for an attorney’s dereliction of duties. (*Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 522-523.)

Throughout the June 28, 2024 hearing, the undersigned asked Bayne and Song a number of simple, straightforward questions regarding the individuals who drafted Student’s June 19, 2024 response to the Order to Show Cause and the attached declarations. Both Bayne and Song inexplicably struggled to answer these questions directly, requiring several clarifying questions before supplying complete answers.

For example, the undersigned noted that Bayne and Song’s declarations were nearly verbatim. When asked how that happened, Song struggled significantly in his explanation. He first testified that he had personally prepared the declaration. When asked if he personally wrote the five substantive paragraphs included in his declaration, Song then testified, “[t]hat’s the discussions we had, and I know of the content of this case, what has been going on. So, the wording that went in agrees with my complete understanding.” Song’s testimony calls into question the truth of his earlier statements.

Song’s testimony was characterized by significant starts and stops, and he provided indirect and evasive answers to direct questions. Song’s nervous demeanor also negatively impacted his credibility. Finally, Song claimed to not be able to remember events that happened mere days before the June 28, 2024 hearing, including events that occurred in the hearing in Sibling A’s case, which had ended on June 25, 2024. Overall, Song’s testimony was not credible. (Evid. Code § 780.)

The undersigned then asked Bayne and Song questions about the information listed on their Attorney Profile pages on the California State Bar website, in part because the information provided on the pleadings in this matter were inconsistent with the information included on those profiles. The undersigned took official notice of Bayne's and Song's public Attorney Profile pages on the California State Bar website as follows:

- Sheila Charlotte Bayne – State Bar Number 123801  
<https://apps.calbar.ca.gov/attorney/Licensee/Detail/123801>
- Seryeon Song (aka Ryan Seryeon Song) – State Bar Number 150212  
<https://apps.calbar.ca.gov/attorney/Licensee/Detail/150212>

The undersigned asked Song whether he resided in Vancouver, Washington, as reflected on his State Bar Profile. Song confirmed that he did and that he was appearing at the videoconference hearing from Vancouver, Washington. Song similarly confirmed that he was in Vancouver, Washington on June 19, 2024, the day he signed his declaration in response to the Order to Show Cause. However, Song's declaration stated that he made that declaration in Orange County, California. When confronted with this clearly false statement, Song was silent for nearly 21 seconds before reluctantly admitting that he signed his declaration from Vancouver, Washington.

Song's demonstrated lack of truthfulness is striking and undermines the credibility of his declaration and other information he provided to OAH in this matter. Following this conversation, Song repeatedly deferred to Bayne, essentially echoing her responses when the undersigned asked him questions.

Bayne's responses to the undersigned's questions were similarly concerning. Her testimony was characterized by similar levels of evasiveness, providing indirect and circular answers to direct, straightforward questions. Several of Bayne's responses were given flippantly or sarcastically. For example, when asked whether she was in Orange County, California when she signed her declaration, Bayne sarcastically replied "I believe so." Further, Bayne expressed an occasional apology for her actions, but the tone and manner in which Bayne made those apologies demonstrated that Bayne was not sincere. (Evid. Code § 780.)

During the hearing, the undersigned noted that Student's counsel failed to respond to the undersigned's concerns regarding Student's counsel's lack of candor surrounding the circumstances of the June 13, 2024 request for continuance. The undersigned again stated his concerns and provided another opportunity for Student's counsel to respond.

However, Student's counsels' responses were still lacking. Student's counsel could not credibly explain how the conflict was not foreseeable when Student's counsel had requested eight days to present the case in chief for Sibling A's case, when there were not eight calendar days between June 11, 2024 – the date Sibling A's matter was set to start – and June 18, 2024, the date Student's matter was set to start. Rather than answer the undersigned's questions directly, Student's counsel were again evasive, and provided meandering, indirect answers.

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For example, Bayne flippantly testified that “it would have been nice” if Student had requested the continuance earlier. Bayne also testified that the conflict between Sibling A’s case and Student’s case was still not certain because “we did not also know whether the hearing the following week, whether there were going to be any dark days or continuances. Those were yet to be decided.”

Bayne’s testimony contains additional misrepresentations and false statements. As of the time Student filed her June 13, 2024 request for continuance, neither party had requested any other continuance in Student’s matter nor had there been any requests for OAH to go dark on days that overlapped. Therefore, Bayne’s defense to her actions was founded on untrue statements and were themselves further misrepresentations to OAH. Thus, Bayne compounded one breach of her duty of candor with another.

Lastly, the undersigned asked Bayne and Song who discussed the conflict in dates between Sibling A’s case and Student case with Parent and when did that discussion happen. Song testified that he had that conversation with Parent and that he was in “constant” communication with her. However, Song could not provide a date as to when the conversation took place. He instead provided vague allusions to when it may have happened, even undercutting his previous testimony by stating that another staff member of Bayne’s firm may have had the discussion.

Bayne and other attorneys in her firm have previously been found to not have adequately communicated with their clients in matters before OAH. (See e.g. *Student v. Rincon Valley Union Elementary School District* (December 22, 2023) Cal. Ofc. Admin. Hrngs., Case No. 2023090321.) Given this history, and the lack of clear responses from Song, it is not at all clear that Bayne, Song, or any other attorney from the Law Offices of

Sheila C. Bayne, Esq., discussed the scheduling conflicts with Parent. The lack of declaration from Parent regarding her wishes to participate in Student's hearing, or her lack of wish to participate in Sibling C's hearing, reinforce this finding.

Student's counsels' continual lack of candor toward OAH, and Bayne's lack of remorse for her and her employees' actions, is further evidence of Student's counsels' frivolous actions and bad faith. This was taken into consideration when shifting costs through this Order.

## **COSTS ARE NOT SHIFTED TO MORRIS**

Attorney Morris was absent from the June 28, 2024 hearing, despite the clear order to appear. Bayne testified that Morris was on a preplanned vacation, unreachable, and that Bayne's office had not been able to inform Morris of the June 28, 2024 hearing, despite "repeated attempts." However, Bayne could not answer even simple questions from the undersigned regarding when Bayne's office first tried to contact Morris or when Morris left on her preplanned vacation. Considering Morris has declared under the penalty of perjury that she is an attorney with the Law Offices of Sheila C. Bayne, Esq., it is notable that Bayne was not able to contact her employee Morris or know when she was on vacation.

Nevertheless, the evidence showed that Morris has had minimal involvement with this case and observed the June 7, 2024 PHC for training purposes. The undersigned is exercising his discretion to not extend the cost shifting ordered herein to Morris. (Cal. Code. Regs., tit. 5, § 3088.)

However, Morris appeared on Student's behalf and did so under the supervisory authority of Bayne and The Law Offices of Sheila C. Bayne, Esq. Thus, Bayne is required to ensure all lawyers, and nonlawyers acting on her behalf, comply with the rules of Professional Conduct and the State Bar Act. (Rules of Prof. Conduct, rule 5.1.) Bayne's failure to adequately supervise her employee Morris and ensure her attendance at the June 28, 2024 hearing constitutes further misconduct on Bayne's part. (*In re Valinoti*, *supra*, 2002 WL 31907316 at p. 15; see also Rules. Prof. Conduct, rule 1.3 (Diligence).)

## BAYNE'S HISTORY OF IMPROPER CONDUCT

Bayne and the Law Offices of Sheila C. Bayne, Esq. have been repeatedly subject to OAH orders shifting costs for frivolous bad faith conduct. This history is relevant to determining a sufficient level of cost shifting to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. (Code Civ. Proc., § 128.5, subd. (f)(2).) This history is more relevant considering the Legislature's instruction that the courts shall vigorously use their authority to deter improper actions or tactics. (Code Civ. Proc., § 128.5, subd. (g).)

The following examples include a non-exhaustive list of previous cost shifting orders issued by six different ALJs:

- *Student v. Chaffey Joint Union High School District*, OAH Case No. 2020120161, August 21, 2021 Order Shifting Costs for Failure to Produce Scheduled Expert Witness for Hearing on June 22, 2021 (finding Bayne's explanations for a scheduled "expert witness's unavailability were inconsistent and not credible," "misleading, unprofessional, and evidence of bad faith," and the failure to

produce the scheduled expert witness “caused an unreasonable delay of the hearing and prejudice to” the school district, a special education local plan area, called a SELPA, and OAH; shifting to Bayne and Law Offices of Sheila C. Bayne, Esq. \$1,282.75 costs the district and SELPA incurred in attorney’s fees and staff charges as a result of Bayne’s bad faith, and unilateral decision without good cause to cancel her expert’s testimony);

- *Student v. San Marcos Unified School District*, OAH Case No. 2021120803, April 4, 2022 Order Ruling on Order To Show Cause, District’s Motion to Dismiss Student’s Complaint with Prejudice, and District’s First and Second Motions To Shift Fees (finding Bayne’s and other attorneys’ of Law Offices of Sheila C. Bayne, Esq. failure to file an accurate prehearing conference statement for the February 25, 2022 prehearing conference, failure to comply with the ALJ’s February 25, 2022 Order Following Prehearing Conference, and unfamiliarity with the student’s prehearing conference statement and/or the complaint at both the February 25 and March 14, 2022 prehearing conferences were “egregious reckless errors” and in bad faith; shifting costs to the student and Law Offices of Sheila C. Bayne, Esq. \$738 for “inexcusable errors” by the student’s attorneys that were “unreasonable, delayed the proceedings, and directly caused [the district] to incur additional attorney’s fees”;
- *Student v. Yuba City Unified School District*, OAH Case No. 2023020646, April 5, 2023 Order Shifting Costs for Attorney Misconduct and April 17, 2023 Order Specifying Costs Shifted (finding “pattern of misconduct by Ms. Bayne” in knowingly and deliberately violating OAH pleading requirements for a

concise statement of issues, despite repeated admonitions by OAH, to be “made in bad faith and ... frivolous under applicable law”; shifting costs to Bayne individually \$968 in school district’s attorney’s fees for researching and preparing its Motion to Strike Petitioner’s Prehearing Conference Statement);

- *Student v. Twin Rivers Unified School District*, OAH Case No. 2023020613, April 24, 2023 Order Following Prehearing Conference for Hearing by Videoconference; Order Granting Motion to Dismiss; Order Granting in Part, and Denying in Part, the Motion for Sanctions, and Shifting Fees (finding employee of Law Offices of Sheila C. Bayne, Esq., James Peters, twice refused to discuss the facts forming the basis of the complaint at the scheduled resolution sessions as required by federal statute and regulation, the second time in defiance of OAH’s March 27, 2023 Order to reasonably participate in a resolution, which constituted “bad faith tactics”; shifting costs to Bayne and Law Offices of Sheila C. Bayne, Esq. \$4,895.50 in the school district’s attorney’s fees to bring motions due to Bayne’s “bad faith tactics causing unnecessary delay and undue consumption of the public’s ... resources”); and
- *Student v. Twin Rivers Unified School District*, OAH Case No. 2023020611, June 8, 2023 Order Following Prehearing Conference for Hearing by Videoconference; Order Granting Motion to Dismiss, and Order Granting in Part, and Denying in Part, the Motion for Sanctions or Shifting Costs (finding “Student’s representatives’ repeated refusals to participate in a resolution session amounted to bad faith tactics warranting a shifting of fees and costs to Attorney Bayne and her law firm”; shifting costs to Bayne and Law Offices of Sheila C. Bayne, Esq. \$5,868 in the school district’s attorney’s fees where

“several prior OAH orders of cost shifting, or sanctions, against Bayne and her firm have failed to deter them from violating special education statutes, regulations, and OAH orders.”

- *Student v. Elk Grove Unified School District*, OAH Case No. 2023030253, July 3, 2023 Order Granting Motion for Sanctions to Shift Expenses (finding Bayne had named Round Valley Indian Tribes as a party on a student’s behalf, despite expressly representing that she did not represent Round Valley Indian Tribes and refusing to dismiss them as a party; and shifting costs to Bayne and the Law Offices of Sheila C. Bayne, Esq. in the amount of \$15,549 in the school district’s attorney fees related to its efforts to dismiss Round Valley Indian Tribes as a party, for

“naming as a co-petitioner an entity that does not have standing in an IDEA due process matter, and an entity for which Bayne was not an attorney, and then unreasonably refusing to correct that baseless conduct despite being given repeated opportunities to do so without need for a motion compelling her to do so.”

The undersigned takes official notice of the official administrative record in each of these matters. (*Hogen, supra*, 147 Cal. App. 3d at p. 125; Evid. Code § 452(c).) Bayne and her office’s history of misconduct and refusal to change their behavior is significant. The following cost shifting is ordered with this in mind. (Code Civ. Proc., § 128.5, subds. (f)(2) & (g).)

## SHIFTING COSTS TO ATTORNEYS FOR STUDENT

Sheila Bayne, Ryan Song, and the Law Offices of Sheila C. Bayne, Esq., have engaged in significant misconduct deserving of cost shifting. This Order requires Sheila Bayne, Ryan Song, and the Law Offices of Sheila C. Bayne, Esq. to pay for OAH's costs related to Student's counsels' significant misconduct. (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e).) OAH has received the necessary permission from the General Counsel of the California Department of Education to shift OAH's costs as described in this Order.

To date, OAH has incurred the following costs related to Student's untimely June 13, 2024 request for continuance:

1. \$700.00 (2 hours at \$335 per hour + \$30.00 recording fee) to prepare for and convene June 7, 2024 prehearing conference;
2. \$335.00 (1 hour at \$335 per hour) to prepare the order following the June 7, 2024 prehearing conference;
3. \$837.50 (2.5 hours at \$335 per hour) to prepare for the due process hearing originally scheduled to begin on June 18, 2024; and
4. \$502.50 (1.5 hours at \$335 per hour) to review Student's June 13, 2024 request for continuance and prepare order.

OAH's total costs are \$2,375.00. These costs do not include technical review related to the above listed entries, which total \$670.00 (2 hours at \$335).

Stockton did not request shifting of any costs it may have incurred as a result of Student's counsels' misconduct.

## ORDER

1. Sheila Bayne and Ryan Song, of the Law Offices of Sheila C. Bayne, Esq., have committed misconduct which is subject to cost shifting.
2. Sheila Bayne, Ryan Song, and the Law Offices of Sheila C. Bayne, Esq. shall be jointly and severally liable for the costs imposed through this Order. Sheila Bayne, Ryan Song, and the Law Offices of Sheila C. Bayne, Esq. may apportion the costs imposed by this Order at their discretion.
3. Within 30 calendar days, Sheila Bayne, Ryan Song, and the Law Offices of Sheila C. Bayne, Esq., shall pay the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833, Attn: Poh-Ling Oon, by certified check the sum of \$2,375.00.
4. No costs associated with this Order shall be shifted to Student or Parent.
5. Sheila Bayne and Ryan Song shall personally provide Parent with a copy of this Order within three business days.
6. Within six business days, Sheila Bayne and Ryan Song shall file with OAH sworn declarations under the penalty of perjury that they have timely provided Parent with a copy of this Order. Bayne and Song shall timely serve these declarations on Stockton.
7. Within ten business days, Addison Morris shall file with OAH a sworn declaration under the penalty of perjury that she has reviewed this Order. Addison Morris shall timely serve this declaration on Stockton.



8. OAH shall also mail a copy of this Order directly to Parent.
9. OAH shall provide this Order to the State Bar of California as required by Business and Professions Code, section 6086.7, subdivision (a)(3).
10. Failure to pay the costs required by this Order may result in a civil judgment or finding of contempt.

IT IS SO ORDERED.

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings