

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 DENYING MOTION TO STRIKE, CONTINUING  
HEARING ON MOTION FOR SANCTIONS AND ORDER TO  
SHOW CAUSE WHY OAH EXPENSES SHOULD NOT BE  
SHIFTED, AND SETTING BRIEFING SCHEDULE

JANUARY 12, 2024

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 by failing to participate in the pre-hearing meet and confer process. On December 19, 2023, at 6:20 AM, Student's attorney Sheila Bayne filed a 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.

On December 28, 2023, OAH served on the parties an Order Setting Hearing On Motion For Sanctions And Briefing Schedule, and an Order Vacating Hearing Dates and Order To Show Cause Why OAH Expenses Should Not Be Shifted. The Orders set the hearing on both Stockton's Motion for Sanctions, and the Order to Show Cause, for January 12, 2024 at 3:00 PM.

The Order Setting Hearing On Motion For Sanctions And Briefing Schedule set January 4, 2024 as the last day for Stockton to file and serve a supplemental brief and supporting declarations setting forth the nature and amount of the expenses sought in Stockton's motion, and January 10, 2024 as the last day for Student's attorneys to file and serve a response to any motion for sanctions.

Stockton did not file and serve any supplemental brief and supporting declarations on or before January 4, 2024, as ordered. On January 10, 2024, Student filed and served a timely Opposition to Stockton's Motion for Sanctions. Also, on January 10, 2024, Stockton filed and served an untimely Response To Order to Show Cause and Motion For Sanctions. Stockton's response totaled 65 pages, including exhibits, and requested OAH order Student's attorneys to pay Stockton \$13,680.00 as sanctions.

On January 11, 2024, Student filed a Motion to Strike Stockton's Response To Order to Show Cause and Motion For Sanctions, on the basis that it was not filed on or before January 4, 2024, as ordered by OAH.

The Individuals with Disabilities Education Act, and its enabling regulations and related state authorities, do not contain provisions governing a motion to strike in special education proceedings. Student cites Code of Civil Procedure section 435, subdivision (b)(1) as authority for Student's motion to strike. Section 435 authorizes a party to file a motion to strike all or any part of a pleading within the time allowed to respond to the pleading. Code of Civil Procedure section 436, subdivision (b), grants judicial discretion to strike out all or any part of any pleading not drawn or filed in conformity with an order of the court. However, Code of Civil Procedure section 436, subdivision (a)(2) defines a pleading as a demurrer, answer, complaint, or cross-complaint, a definition that does not encompass Stockton's supplemental brief in support of its motion for sanctions.

Although Student has not cited persuasive authority for its motion to strike, it would be prejudicial to Student to allow Stockton's late-filed brief to deny Student an opportunity to respond to Stockton's factual and legal arguments in support of sanctions against Student's attorneys. OAH's order served December 28, 2023, provided Student four business days to respond with a brief timely-filed by Stockton. To provide Student time to respond to Stockton's late-filed brief in support of its motion for sanctions, the January 12, 2024 hearings on the Motion For Sanctions, and Order To Show Cause Why OAH Expenses Should Not Be Shifted, will be continued to January 22, 2024 at 1:00 PM, and Student will be given leave to file a response to Stockton's Response To Order to Show Cause and Motion For Sanctions on or before January 18, 2024, at 5:00 PM.

## ORDER

1. Student's Motion to Strike Stockton's Response To Order to Show Cause and Motion For Sanctions is denied.
2. The pending hearings on Stockton's Motion For Sanctions, and OAH's Order To Show Cause Why OAH Expenses Should Not Be Shifted, are both continued to January 22, 2024, at 1:00 PM.
3. The previous hearing date and time of January 12, 2024, at 3:00 PM for both the Motion for Sanctions, and Order to Show Cause, is vacated.
4. Student may file a response to Stockton's Response To Order to Show Cause and Motion For Sanctions no later than January 18, 2024, at 5:00 PM.



Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings