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 TO SHOW CAUSE AS TO WHY MATTER SHOULD NOT BE DISMISSED FOR NONCOMPLIANCE WITH OAH REQUIREMENTS FOR PREHEARING CONFERENCE STATEMENTS AND FOR NONAPPEARANCE AT PREHEARING CONFERENCE

MARCH 27, 2023

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. On March 27, 2023, at the

PHC, the undersigned granted the motion to strike Student's PHC statement. There was no appearance for Student at the PHC.

It appears in the instant matter that Student's attorney has violated an admonition by OAH Administrative Law Judge Chris Butchko in a different special education matter. 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 attorney 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. The undersigned ALJ has on his own motion

previously stricken from the record a noncomplying prehearing conference statement filed by Student's attorney for the same reason. (*Student v. Pasadena Unified School Dist*. (Oct. 7, 2021)(Order Striking Student's Prehearing Conference Statement from Record).)

It also appears that Student's attorney has no intention of complying in the future with the requirement for a concise statement of issues in a PHC statement. Student's opposition to the motion to strike is defiant and disingenuous. 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 attorney entirely disregards the fact that the admonition is also in Judge Butchko's written order.

In addition, neither Student's attorney nor anyone else from her law firm appeared at the regularly scheduled prehearing conference at 10 a.m. on March 27, 2023. The undersigned ALJ and the attorneys for Yuba City waited for an additional ten minutes before proceeding. OAH received no contact from Student's attorney that would have explained her absence. There is a note in the file, however, that at approximately 10:25 a.m., a representative from Student's counsel's office called to state that counsel was having trouble with the link to the Zoom meeting. Since every other participant in the PHC used the same link successfully, this explanation was neither timely nor persuasive.

ORDER TO SHOW CAUSE

1. Attorney Sheila Bayne is ORDERED TO SHOW CAUSE, if she has any, by the close of business on March 28, 2023, why she should not be sanctioned for her refusal to comply with OAH's pleading requirements, or why this matter should not be dismissed.
2. Attorney Bayne is also ORDERED TO SHOW CAUSE, if she has any, by the close of business on March 28, 2023, why she should not be sanctioned for Student's failure to attend the prehearing conference on March 27, 2023, or why the matter should not be dismissed.
3. The response of Student's counsel shall include a declaration under oath setting forth the particular facts of each of these events in detail.
4. Yuba City is invited to file any appropriate response it may have to this Order to Show Cause by the close of business on March 28, 2023.
5. Whether OAH shall dismiss this matter and/or impose sanctions on Student's counsel will be decided on the pleadings filed in response to this Order. Oral argument will not be entertained.

IT IS SO ORDERED.

Charles Marson

Charles Marson

Administrative Law Judge

Office of Administrative Hearings