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 VACATING HEARING DATES, AND ORDER TO SHOW CAUSE WHY STUDENT AND STUDENT'S ATTORNEYS SHOULD NOT BE ORDERED TO PAY OAH EXPENSES

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.

Student and Stockton attended the December 11, 2023 prehearing conference. At the prehearing conference, the Administrative Law Judge, called an ALJ, ordered all parties to 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.

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. In the supporting declaration of Stockton's attorney Dee Anna Hassanpour, Hassanpour declared under penalty of perjury 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.

After the prehearing conference on December 11, 2023 to the date of this Order, OAH incurred costs totaling $4,355.00 preparing for the December 19, 2023 due process hearing, editing an electronic evidence file for the parties to upload hearing exhibits, preparing an order setting a briefing schedule and hearing date on Stockton's motion for sanctions, and preparing this order. This included a total of 13 hours of ALJ time, billed to the California Department of Education at a rate of $335.00 per hour. The ALJ responsible for maintaining the electronic evidence file for hearing of the matter billed a total of 1.25 hours on December 12, 15, and 18, 2023. The hearing ALJ billed 6.5 hours on December 18, 2023 preparing for hearing and emailing the parties invitations with a link to the videoconference hearing, and an additional hour preparing for the hearing early on December 19, 2023. The hearing ALJ billed 1.5 hours on December 19, 2023 preparing the order on Stockton's motion for sanctions, and 2.25 hours preparing this order. OAH estimates up to an additional 4 hours of ALJ time, costing $1340.00, will be incurred with respect to this order and motions for sanctions.

APPLICABLE LAW

In certain circumstances, 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).)

With approval from the General Counsel of the California Department of Education, the 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) & €; see Gov. Code, § 11455.30, 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).)

"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. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

ORDER TO SHOW CAUSE

Student is ordered to appear on January 12, 2024 at 3:00 PM for a Zoom videoconference hearing of an Order to Show Cause why Student, and Student's attorneys Sheila Bayne, Constance Zarkowski, Peter Collisson, and the Law offices of Sheila Bayne, should not be required to pay the expenses OAH incurred after the December 11, 2023 PHC to prepare for the December 19, 2023 due process hearing, edit the electronic evidence file for the parties to upload hearing exhibits, prepare an order setting a briefing schedule and hearing date to address Stockton's motion for sanctions,

prepare this order, prepare for and hold hearings on the motion for sanctions and this order, and prepare orders on sanctions and this order.

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 January 10, 2024. The response shall address why OAH should not order Student and/or Student's attorneys to pay OAH's expenses. In addition to any legal argument, the response shall include sworn declarations containing a factual explanation of why Student failed to respond to Stockton and Tracy's attempts to conduct the meet and confer ordered at the December 11, 2023 prehearing conference in this matter, and why Student failed to notify Stockton, Tracy, or OAH until the morning of December 19, 2023 that Student would not be proceeding with the hearing scheduled to start at 9:30 AM that day.

IT IS SO ORDERED.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings