

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
PLEASANTON UNIFIED SCHOOL DISTRICT  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JON VRANESH,

A Permanent Certificated Employee,

Respondent.

OAH No. 2014120486

**ORDERS RE MOTIONS AND  
PREHEARING CONFERENCE**

Administrative Law Judge Diane Schneider conducted a prehearing conference in this matter on January 9, 2015. Complainant Pleasanton Unified School District (District) is represented by Kim Kingsley Bogard, Attorney at Law, Kingsley Bogard LLP. Respondent Jon Vranesh was present for the conference. He is represented by H. Paul Kondrick, Attorney at Law.

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*District's motion to strike respondent's notice of defense*

TIMELINESS OF COMPLAINANT'S MOTION AND RESPONDENT'S RESPONSE

1. On January 5, 2015, the District filed a motion to strike respondent's notice of defense. On January 13 and 16, respondent filed responsive pleadings. California Code of Regulations, title 1,<sup>1</sup> section 1026, subdivision (b), provides that prehearing motions shall be filed 15 days prior to the prehearing conference, and responses shall be filed three days before the prehearing conference. Section 1022 contains similar provisions regarding the filing of all motions made before hearing: they must be filed 15 days before hearing, and responses must be filed within three days before the motion is scheduled to be heard. The Presiding Judge, or her designee, has the discretion to alter these timelines. In the instant case, although the District's motion to strike and respondent's response were not timely filed, they will nonetheless be decided in the interests of addressing the substantive issues raised by the parties.

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<sup>1</sup> All references are to the California Code of Regulations, title 1, unless otherwise indicated.

RELEVANT LAW AND FACTS RE MOTION TO STRIKE

2. Government Code section 11506, subdivisions (a) and (c), together provide that a respondent is entitled to a hearing on the merits of an accusation if he files a notice of defense with the agency within 15 days after the service of the accusation. Failure to file a notice of defense constitutes a waiver of respondent's right to a hearing. (Gov. Code, § 11506, subd. (c).) Government Code section 11506, subdivision (d), does not require that the notice of defense be verified or follow any particular form.

3. On November 19, 2014, the District notified respondent that the statement of charges against him had been adopted by the District's board of trustees, and that he would be dismissed within 30 days from the date of service of that notice unless he filed a written request for hearing. By letter dated November 26, 2014, attorney Kondrick informed District counsel Louis A. Leone<sup>2</sup>: "So that there is no misunderstanding, we inform you at the earliest possible moment that Mr. Vranesh is requesting/demanding a hearing." Kondrick also informed Leone regarding respondent's intention to take depositions of 35 District employees.

4. On December 11, 2014, the accusation was served. On the same day, the District filed a request to set a hearing. On December 12, 2014, respondent filed with the agency a document titled "Demand for Hearing" (demand). In his signed demand respondent states his address, demands a hearing and denies the charges filed against him. He also lodged a variety of objections and defenses regarding the charges contained in the accusation.

5. On December 12, 2014, the Office of Administrative Hearings issued a notice of prehearing and settlement conferences. On December 16, 2014, Kondrick requested a telephonic conference to discuss the calendaring of the prehearing and settlement conferences. On December 18, 2014, Administrative Law Judge David L. Benjamin issued an order setting prehearing and settlement conferences on January 9, 2014, and setting hearing dates. On the same day, the District issued a notice of hearing for February 4-5, 17-20, and 24-27, 2015.

6. On December 31, 2014, respondent filed a document titled "Notice of Special and Other Defenses" (special defenses) with the Office of Administrative Hearings, and emailed a copy of it to District counsel Bogard. This document, filed by respondent's counsel, amended the demand filed by respondent on December 12, 2014.

7. On January 5, 2015, the District filed a motion to strike respondent's special defenses, filed on December 31, 2014, on the grounds that it was not filed within 15 days after the District filed the accusation. The District also requests an order that respondent waived his right to a hearing,

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<sup>2</sup> Leone no longer represents the District in the instant proceedings.

RULING ON MOTION TO STRIKE

8. It is found that the demand filed by respondent on December 12, 2014, is sufficient to comply with the requirements for notices of defense set forth in Government Code section 11506. This conclusion is not altered by the fact that the document filed on December 12, 2014, is not entitled a notice of defense because Government Code section 11506, subdivision (c), does not require that a notice of defense follow any particular form. In a similar vein, respondent's filing of a document on December 31, 2014, entitled notice of special and other defenses, does not alter the fact that respondent filed a legally sufficient notice of defense on December 12, 2014. Accordingly, the District's motion to strike respondent's notice of defense and the request for an order that respondent waived his right to a hearing is DENIED.

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*District's motion to quash*

RELEVANT LAW AND FACTS RE MOTION TO QUASH

9. On December 11, 2014, the District filed an accusation against respondent. The accusation is over 100 pages in length. On December 19, 2014, respondent filed with the District deposition notices for a total of 37 individuals. The depositions were noticed to occur during the period of January 6-28, 2015.

10. Fifteen witnesses were noticed for depositions during the period of January 6-9, 2015. On January 7, 8, and 9, 2015, respondent deposed six individuals.<sup>3</sup> Nine of the remaining witnesses whose depositions were scheduled failed to appear. Two of these individuals are critical witnesses to respondent's case. The District has refused to reschedule these depositions with respondent.

11. On January 12, 2015, the District filed a motion to quash respondent's notice of deposition and subpoenas for all depositions scheduled on or after January 13, 2015. The District did not file any written objection to respondent's December 19 deposition notices prior to filing its motion on January 12, 2015. The District did not meet and confer with respondent prior to filing the motion to quash. Additionally, the District did not apply for an order staying the depositions, and it did not object to respondent's deposition notices at the prehearing conference on January 9, 2015.

12. On January 13, 2015, respondent and counsel appeared in Pleasanton at 9:00 a.m. for the deposition of Valexis Sutton, who was subpoenaed to appear. Neither Ms. Sutton nor District counsel appeared. When respondent's counsel called the District's

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<sup>3</sup> The depositions of two individuals were not completed, and were continued by agreement of the parties.

counsel, he was informed that the District was suspending all further and remaining depositions pending the outcome of its motion to quash. According to respondent, there are 25 witnesses who have not yet been deposed.

13. On December 19, 2014, when respondent filed his deposition notices, the Education Code did not limit the number of depositions that could be taken. Effective January 1, 2015, Education Code section 44944.05, subdivision (c), limits parties to taking no more than five depositions each.<sup>4</sup> In its motion, the District argues that respondent should be subject to the five-witness limitation on depositions contained in Education Code section 44944.05, subdivision (c).

14. Respondent argues that the limitations on depositions contained in Education Code section 44944.05, subdivision (c), should not apply because the depositions were noticed on December 19, 2014, prior to the effective date of the statute. Respondent also asserts that he will be prejudiced by a ruling limiting him to five depositions because he was not afforded the opportunity to choose which five individuals to depose. Had he known that his depositions would be limited he would have chosen not to depose the individuals who appeared for their depositions in early January. Citing *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, and other relevant authorities,<sup>5</sup> respondent contends that applying the limitations on depositions contained in Education Code section 44944.05, subdivision (c), to the facts in the instant case would constitute an impermissible retroactive application of the law. Respondent is correct.

RULING ON THE DISTRICT'S MOTION TO QUASH AND RESPONDENT'S REQUEST FOR SANCTIONS BASED UPON THE DISTRICT'S FAILURE TO MEET AND CONFER PRIOR TO FILING THE MOTION

15. The District's motion to quash respondent's notice of depositions and subpoenas is DENIED. The limitation on depositions contained in Government Code section 44944.05, do not apply to the instant case. The factors considered in making this determination include the following: Respondent filed with the District notices to take 37 depositions on December 19, 2014, prior to the effective date of the legislation. Respondent reasonably expected to be able to take the depositions of 37 witnesses. The District did not object to the deposition notices filed by respondent until January 13, 2015, after he completed six depositions. If respondent is now limited to five depositions, he will have lost the choice to determine which individuals to depose.

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<sup>4</sup> Pursuant to Education Code section 44944.05, subdivision (c), the District may take the depositions of respondent and no more than four other witnesses, and respondent may take depositions of no more than five witnesses.

<sup>5</sup> See respondent's brief in opposition to the District's motion to quash, at pages 10-11.

16. Respondent rightly asserts that the District's unilateral suspension of the depositions on January 13, 2015, was improper insofar as it contravened the procedures for objecting to deposition notices set forth in Code of Civil Procedure section 2025.410, which includes the requirement that a motion to quash be accompanied by a meet and confer declaration under Code of Civil Procedure section 2016.040. The declaration of attorney Lindsay K. Moore, in support of the District's motion to quash, does not include a meet and confer declaration. Respondent requests an order requiring the District to pay his attorney's fees in the amount of \$3,150.<sup>6</sup> Respondent is correct in his assertion that the District's failure to meet and confer with him prior to filing its motion to quash requires the imposition of a monetary sanction. Code of Civil Procedure section 2023.020 provides:

Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct.

The District did not submit any authority or argument in response to respondent's request for attorney's fees pursuant Code of Civil Procedure, section 2023.020. Accordingly, pursuant Code of Civil Procedure, section 2023.020 the District is ordered to pay respondent's attorney's fees in the amount of \$3,150, forthwith. The District's failure to notify respondent's counsel that it was suspending the taking of any further depositions until respondent called the District from the deposition site on January 13, 2015, after a witness failed to appear, was considered in making this order.

17. The District is ordered to immediately make the remaining witnesses available for deposition by respondent. The District's failure to comply with this order will result in additional sanctions.

18. Any contentions raised by the parties and not discussed above have been found to be without merit and are hereby rejected.

#### RULING ON MOTIONS FOR SANCTIONS

19. Both parties request sanctions pursuant section 1040, based upon ". . . bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." The parties' reciprocal motions for sanctions are DENIED.

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<sup>6</sup> Respondent's counsel states that he spent 10.5 hours, at the rate of \$300, as a result of the District's conduct.

*Orders following prehearing conference*

20. Respondent waives his right under Education Code section 44944, subdivision (a), to commence his hearing within 60 days from the date on which he demanded hearing. This matter is currently set for hearing on February 4-5, 17-20, and 24-27, 2015. The parties request a brief continuance of the hearing in order to afford them additional time to complete discovery and prepare for hearing. The request for a continuance is granted. The parties also request five additional days for hearing. They represent that the hearing can be completed in 15 days. The hearing is continued to the following dates, which are agreeable to the parties: February 17-20, 24-27, March 2-6 and 9-10, 2015, commencing at 9:30 a.m. on the first day and at 9:00 a.m. on all subsequent days. The District shall re-notice the hearing dates accordingly.

21. Respondent's request to change the location of the hearing from the District's Office to the Office of Administrative Hearings is unopposed, and is granted. The hearing shall take place at the Office of Administrative Hearings Oakland office.

22. The District shall file three copies each of the Accusation and the Statement of Charges two weeks prior to the commencement of the hearing.

23. The parties agreed that they will complete discovery by January 30, 2015, except for depositions, which they agreed will be completed by February 2, 2015. Any discovery material that has not been provided by that date shall be inadmissible absent a showing of good cause. Any expert witness whose identity was not disclosed prior to that date shall not be permitted to testify absent a showing of good cause.

24. Counsel shall supply the names and all contact information (including addresses, home and school telephone numbers, and email addresses) of their respective commission nominees no later than February 2, 2015.

25. Counsel shall meet and confer at least once prior to the commencement of the hearing in order to discuss ways to make the discovery and hearing process as efficient as possible for all concerned. The discussion should include reaching stipulations as to facts not in dispute and to the admission of evidence. Counsels are ordered to avoid filing any further motions unless and until they have made a concerted effort to resolve the issues informally.

26. Counsel shall cooperate in the scheduling of witnesses, meeting and conferring with each other regularly to keep each other and the hearing judge apprised of the expected schedule of witnesses. Witnesses should be scheduled to fill the entire day. At the discretion of the hearing judge, witnesses may be taken out of order to accommodate witnesses and their schedules.

27. Counsel shall prepare binders containing their exhibits. A binder shall be provided for each member of the Commission, the witness, and the opposing party. The

District shall identify its exhibits with numbers, and Respondent shall identify his exhibits alphabetically. The exhibits shall be paginated. Counsel shall bring their exhibit binders on the first day of the hearing.

28. The parties were informed at the prehearing conference that the undersigned will be out of the office and unavailable to respond to any inquiries or motions between January 26-30, 2015.

IT IS SO ORDERED.

DATED: January 23, 2015

A handwritten signature in black ink, appearing to read 'Diane Schneider', is written over a horizontal line.

DIANE SCHNEIDER  
Administrative Law Judge  
Chair, Commission on Professional Competence