

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2009020043

ORDER GRANTING MOTION TO
STRIKE

On January 30, 2009, Elk Grove Unified School District (District) filed with the Office of Administrative Hearings, Special Education Division (OAH), a Complaint for Due Process (Complaint) that names Student as the respondent. Paragraph 11 of the Complaint contains allegations that refer to November 2008 mediations between the parties in a prior special education due process proceeding.

On February 5, 2009, Student filed with OAH a Notice of Insufficiency; Motion To Dismiss And/Or Strike Complaint. The Motion to Dismiss And/Or Strike is directed against Paragraph 11 of the Complaint which makes reference to the prior mediation sessions between the parties.

On February 10, 2009, OAH issued an Order finding that the Complaint is sufficient. This Order did not decide the pending Motion to Dismiss And/Or Strike.

It is well-established that a special education mediation is a confidential proceeding and that “Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation . . . is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding.” (Cal. Code Regs., tit. 5, § 3086, subd. (b)(1).)

By this authority, the District is not allowed to reference prior special education mediation proceedings between the parties. Accordingly, Student’s Motion to Strike reference to prior mediation proceedings in the current Complaint is hereby granted.

ORDER

Student’s Motion to Strike paragraph 11 in the District’s Complaint for Due Process is granted.

Dated: February 23, 2009

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings