

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010080478

v.

OAKLAND UNIFIED SCHOOL DISTRICT,

OAKLAND UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011051152

v.

PARENT ON BEHALF OF STUDENT.

ORDER STRIKING PORTIONS OF SOME
PLEADINGS, AND STRIKING OTHER
PLEADINGS FROM THE RECORD IN
THEIR ENTIRETY

On August 9, 2010, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH), OAH Case No. 2010080478. On May 31, 2011, the District filed OAH Case No. 2011051152, with allegations relating to the actions of Student's advocate related to settlement negotiations between the parties in several mediation sessions conducted by Administrative Law Judge (ALJs) Deidre Johnson.¹ Other non-mediation claims were also contained in the complaint, and the District also asked that this complaint and Student's complaint be consolidated.²

On May 27, 2011, Student filed his prehearing conference (PHC) statement in OAH Case No. 2010080478. Portions of that PHC statement also refer to events related to the mediation sessions. On June 2, 2011, Student filed an opposition to the District's motion to consolidate the two matters. This document also refers to mediation-related activities.

¹ ALJ Troy Taira also conducted a mediation session in this matter.

² On June 6, 2011, the District filed an amended complaint with similar allegations. This complaint is being treated as a motion to amend the complaint and will be addressed by separate order once Student's advocate has had an opportunity to file a response. This complaint also contains a motion to consolidate both cases. However, such a motion was considered and granted on June 3, 2011, in relation to the District's original complaint, so the motion to consolidate in the complaint filed June 6, 2011, is moot.

In addition, while reviewing the file, the undersigned ALJ determined that other documents in the file also concern mediation-related activities.

APPLICABLE LAW

There are no provisions governing a motion to strike in special education hearings. Therefore, OAH looks to the California Code of Civil Procedure for guidance. Section 436 authorizes a court to strike “any irrelevant, false, or improper material inserted in any pleading . . . or any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court.”

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).) This includes any activities or actions of parties pursuant to the mediation process. (Cal. Code Regs., tit. 5, § 3086, subs. (b)(2) and (3).)

DISCUSSION AND ORDER

District’s Complaint

The District’s complaint of May 31, 2011, contains allegations concerning the conduct of Student’s advocate pursuant to interim agreements entered into by the parties as a result of negotiations in mediation. The first issue that the District asks OAH to address is related to these mediation related activities. Because mediation is a confidential process, the undersigned ALJ, sua sponte, strikes portions of the District’s complaint. The portion of the complaint beginning with the sentence that starts on line 22 of page two of the complaint, and continuing to the beginning of the sentence commencing at line three, of page four of the complaint shall be stricken. The portion of the complaint stating the District’s first issue on page four, lines 10 through 12 is also stricken, as are lines 18 through 20 on page four which discuss the proposed resolution of the first issue.

Student’s PHC Statement

Student’s PHC statement is in outline form. The material in section I., subsection b. concerns information related to the multiple mediation sessions and mediation process in

which the parties have been engaged. Accordingly, this portion of the PHC statement shall be stricken sua sponte.³

Student's Opposition to District's Motion to Consolidate

The first three paragraphs of Student's opposition to the District's motion to consolidate refer to the allegations in the District's complaint that have been stricken. Accordingly, the first three paragraphs of this opposition are also stricken sua sponte.

Other Documents

The file in Student's case contains several documents concerning activities related to the mediation process the parties have been engaged in since November 2010. These documents are as follows: 1) Student's list of evaluators dated November 30, 2010; 2) Student's notice of non-compliance dated December 8, 2010; 3) Student's amended notice of non-compliance dated December 9, 2010; 4) Student's letter dated April 5, 2011; and 5) District's letter dated May 16, 2010. Because these documents are related to the mediation process, they shall be stricken sua sponte.

OAH shall redact the stricken matter from the District's complaint, Student's PHC statement and his opposition to the District's motion for consolidation. The remaining documents discussed above shall be removed from OAH's file and destroyed.

IT IS SO ORDERED.

Dated: June 6, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

³ A previous PHC statement filed in October 2010 shall remain as part of the record as it does not refer to any mediation proceedings.