

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LARKSPUR-CORTE MADERA SCHOOL  
DISTRICT.

OAH Case No. 2016040860

ORDER DENYING STUDENT'S  
MOTION TO STRIKE DISTRICT'S  
RESPONSE

Student filed a request for due process (complaint) with the Office of Administrative Hearings on April 18, 2016. On April 29, 2016, Larkspur-Corte Madera School District filed a response to Student's complaint with OAH.<sup>1</sup> Student filed a motion to strike the response on May 2, 2016, on grounds that Larkspur-Corte Madera did not timely file the response with OAH, and did not timely serve Student with the response. Student also asks that the response be stricken because certain statements in the response are false.

District filed an opposition to the motion to strike on May 5, 2016, and an amended response on the same date. Student filed a response to the opposition on May 9, 2016.

APPLICABLE LAW

The Individuals with Disabilities Education Act, and its enabling regulations and related state authorities, do not contain provisions governing a motion to strike in special education proceedings. Therefore, OAH looks to the California Code of Civil Procedure for guidance. Section 436 of the Code of Civil Procedure 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.

The IDEA does not require a responding party to file a response to a due process hearing request with OAH. Title 20 of the United States Code, section 1415(c)(2)(B)(i)(II) allows a responding party to challenge the sufficiency of the due process complaint notice, for the purpose of insuring proper notice to the responding party as to the claims raised in the complaint. Absent a timely a notice of insufficiency no other response to a due process hearing request is required.

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<sup>1</sup> District's counsel sent the Response to OAH via facsimile after 5:00 p.m. on April 28, 2016, so the response is deemed filed on the next business day.

In some cases, the IDEA may require a local educational agency to respond directly to a parent who has filed a due process request. If a local educational agency has not sent prior written notice to a parent regarding the subject matter contained in the parent's due process complaint notice, the local education agency, shall, within 10 days of receiving the complaint, send the parent a response to the complaint, which shall include: (i) an explanation of why the agency proposed or refused to take the action raised in the complaint; (ii) a description of other options that the individualized education plan team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the factors that are relevant to the agency's proposal or refusal. The non-complaining party shall send to the complainant a response that specifically addresses the issues raised in the complaint. (20 U.S.C. § 1415 (c)(2)(B).) There is no requirement that the response or prior written notice be filed with OAH.

## DISCUSSION

Student is asking that Larkspur-Corte Madera's response be stricken because it was filed with OAH and sent to Student more than 10 days after Student filed his complaint. He also claims that certain statements in the response are false. Larkspur-Corte Madera contends it met all of the procedural requirements under section 1415(c)(2)(B) in its response, was not required to file a response because it had previously sent Parents prior written notice, and remedied any alleged factual misstatements in its amended response. Student's reply to the opposition contends that it has no way to determine whether the prior written notice was legally compliant. Further, Student contends that Larkspur-Corte Madera was required to seek permission from OAH to file an amended response.

Student relies on California Code of Civil Procedure section 436 as authority for the argument that OAH may strike or dismiss District's response. Section 436 does not apply here because the written notice that the IDEA requires to be sent to a parent is not required to be filed with OAH. While the IDEA has specifically addressed that the responding party to a due process complaint may challenge the complaint's sufficiency, it is silent as to any other response to a complaint. As such, District's response is not a "pleading" in the context of California Code of Civil Procedure section 436.

Student has cited to no applicable authority that empowers OAH to strike a response that Larkspur-Corte Madera was not required to file with OAH. Student's contention that the response contained false information, is not grounds to strike Larkspur-Corte Madera's response. As is the case in all litigated matters, neither the complaint nor the response to the complaint is evidence that is considered by the adjudicator when a case is tried. The adjudicator considers only sworn testimony and documents and other materials that have been admitted into evidence. Finally, there is no requirement that a party seek the permission of OAH to file an amended pleading, except when the complainant seeks to

amend the complaint. (20 U.S.C. § 1415(f)(1)(B); Ed. Code § 56502, subd. (e)). Accordingly, Student's motion to strike is denied.

ORDER

Student's motion to strike Larkspur-Corte Madera's response is denied.

IT IS SO ORDERED

DATE: May 17, 2016

DocuSigned by:

*Rebecca Deie*

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Administrative Law Judge  
Office of Administrative Hearings