

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ROSEDALE UNION ELEMENTARY
SCHOOL DISTRICT AND KERN
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2010020271

ORDER DENYING MOTION TO
STRIKE

On March 2, 2010, Michael E. Robinson, advocate for Student, filed a Motion to Strike Rosedale Union Elementary School District's (District) February 18, 2010 response to Student's complaint. On March 4, 2010, Kathleen R. Lamay, attorney for District, filed a response.

APPLICABLE LAW

The Individuals with Disabilities Education Act (IDEA), Section 1415(c)(2)(B)(ii), and California Education Code section 56502, subdivision (d)(2) require the opposing party to send a response to the complaint to the filing party within 10 days after its receipt of the complaint. Further, within this ten days, pursuant to Section 1415(f)(1)(B)(i)(I), for local education agencies that have not sent a prior written notice to the parent regarding the subject matter contained in the complaint notice, the local educational agency shall send to the parent a response that shall include:

- (aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;
- (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
- (cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- (dd) a description of the factors that are relevant to the agency's proposal or refusal.

DISCUSSION

Student asserts that District failed to serve a copy of its February 18, 2010 response to Student's complaint upon Student's parents (Parent). The February 18, 2010 response shows, and Student concedes, that District served Student's authorized representative advocate. However, Student asserts that all documents should be served upon Parent as well as his advocate. Student's complaint states that service should be carried out by serving Parent, with copies to the advocate.¹

District's response to the motion asserts that District has cured its failure to serve Parent. District attached a proof of service showing that on March 3, 2010, it served Parent with a copy of its response to Student's complaint.

While the IDEA and Education Code section 56502 create the obligation to file a response on a local education agency after a parent files a due process complaint, neither grant the Office of Administrative Hearings the authority to strike an education agency's response. Student has provided no legal authority for his motion. Furthermore, District has cured its failure to serve Parent. Accordingly, Student's motion is denied.

ORDER

Student's motion to strike District's response to the complaint in this matter is denied.

Dated: March 11, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

¹ Embedded within Student's motion is an allegation that District failed to participate fully in a resolution session and therefore, Student waives mediation in this matter. However, Student does not assert this as a ground for his Motion to Strike. Accordingly, it has not been considered in this order. Based on Student's representation, OAH is cancelling the mediation scheduled for March 17, 2010.