

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080523

ORDER DENYING MOTION TO
STRIKE

On September 28, 2010, the Office of Administrative Hearings (OAH) granted Student's motion to amend the complaint (complaint). On October 13, 2010, the Ripon Unified School District (District) filed a Motion to Strike contentions in Student's complaint that referred to other students. On October 18, 2010, Student filed an opposition.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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.”

DISCUSSION

The District requests that OAH strike portions of Student’s complaint that refer by initials to other students who have filed due process hearing complaints against the District, which are still pending. In the complaint, Student alleges that the District retaliated against him regarding the provision of behavior services from Genesis, a nonpublic agency, because of Mother’s advocacy for the other two students. The District asserts that Student is attempting to circumvent an OAH order of September 7, 2010, that denied his and the other students’ request to consolidate their cases against the District. Student opposes the District’s motion as the contention relates to a purported denial of FAPE by the District in not providing Student with needed services in retaliation for Mother’s advocacy.

Student’s complaint allegations that involve other students and Mother’s advocacy do not circumvent the September 7, 2010 order. Student’s allegations go to why the District allegedly stopped providing Student with services from Genesis that he needed to receive a FAPE. Accordingly, the District’s motion to strike is denied.

ORDER

District’s motion to strike portions of Student’s complaint is denied.

IT IS SO ORDERED.

Dated: October 21, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings