

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110748

ORDER DENYING STUDENT'S
MOTION TO STRIKE DISTRICT'S
RESPONSE TO DUE PROCESS
REQUEST

On November 27, 2012, Student filed a Complaint for a Due Process Hearing. On December 6, 2012, District served and filed a Notice of Representation and Response to Due Process Request. On December 12, 2012, Student filed a Motion to Strike [District's] Response to Due Process Request (motion), on grounds that: (i) "[t]here is no provision of law which permits the [District] to file its response . . . with the Office of Administrative Hearings" (OAH); and (ii) "[District's] contentions and arguments contained in its Response are 'improper matter' and are not properly before the [OAH] at this juncture." Student seeks an order striking the Response to Due Process Request (response) and directing the District to re-file a Notice of Representation that omits the response.

Under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) and Education Code, a local education agency (LEA) such as the District is required to send a parent a response to the parent's due process complaint if the LEA has not previously sent a prior written notice to the parent regarding the subject matter contained in the parent's complaint. (See 20 U.S.C. §1415(c)(2)(B)(i)(I); Ed. Code §56502(d)(2)(B).) The response "shall include": an "explanation of why the agency proposed or refused to take the action raised in the complaint;" a "description of other options that the IEP Team considered and the reasons why those options were rejected;" a "description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action;" and "a description of the factors that are relevant to the agency's proposal or refusal." (*Ibid.*)

The IDEA and Education Code neither require, nor prohibit, a LEA's filing of a response with the OAH. However, Student objects to District's response as "an outright attempt to argue [District's] position before any evidence has been put before the administrative law judge," because "District's response was in fact longer than Petitioner's complaint, argues District's position, and is replete with references to cases and statutes, none of which would be required by either 20 U.S.C. §1415(c)(2)(B) or California Education Code [§56502, subdivision (d)(2)(B)]."

There are no statutory provisions governing a motion to strike in a special education proceeding. Therefore, like other administrative agencies in similar situations, the OAH

looks to the Code of Civil Procedure for guidance. (See, e.g., *Brovelli v. Sup. Ct.* (1961) 56 Cal.2d 524, 530 (in the absence of Government Code provisions specifying the manner of service of a summons in an administrative investigation by the attorney general, the Court found it “reasonable to conclude that the process provided for in the Government Code is governed by the summons provisions of the Code of Civil Procedure insofar as appropriate”).)

Code of Civil Procedure section 436 provides that a court in its discretion may, upon terms it deems proper, 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.” As explained in *Ferraro v. Camarlinghini* (2008) 161 CalApp.4th 509, 528, cited in Student’s motion, the purpose of section 436 is to authorize “the excision of superfluous or abusive allegations,” and “the striking of a pleading due to improprieties in its form or in the procedures pursuant to which it was filed,” such as a pleading “filed in violation of a deadline, court order, or requirement of prior leave of court.” Consistent with this authority, the OAH will grant motions to strike on various grounds; for example, striking references to matters discussed in mediation that violate the mediation privilege (Cal. Code Regs., tit. 5, § 3086, subd. (b)(1)), and untimely-filed briefs and evidence the late admission of which would be prejudicial.

Here, however, the District’s filing of its response, though unnecessary, did not directly violate any statute, rule or court order. The allegedly objectionable legal citations and argument included in the response would be expected to be presented later in this proceeding, if not at the prehearing conference as part of District’s required “concise statement of the issues . . . and the proposed resolution of the issues,” then at hearing, or in post-trial briefing, for potential use in evaluating the actual evidence presented by the parties at the hearing. Because the arguably early introduction “at this juncture” of legal citations and argument that will not be considered as evidence in this proceeding is neither prohibited nor potentially prejudicial, it is not necessary to expend the resources of the parties or the OAH to correct it.

Accordingly, Student’s motion is denied.

Dated: December 26, 2012

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings