

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MILL VALLEY ELEMENTARY SCHOOL
DISTRICT.

OAH Case No. 2014110046

ORDER DENYING DISTRICT'S
MOTION TO STRIKE APPENDICES
TO STUDENT'S CLOSING BRIEF;
ORDER CONTINUING MATTER TO
PERMIT ADDITIONAL BRIEFING

On June 22, 2015, the parties timely filed their written closing briefs. Student's brief included several appendices in the form of charts. The first chart, Appendix A, contains a table of the initials Student used in his closing brief to identify parties and witnesses, as well as acronyms he used in the brief. Appendices B, C, D, and E, are tables or charts created by Student's counsel which appear to be compilations of information based on evidence admitted at hearing.

On June 23, 2015, Mill Valley filed a motion to strike Appendices B through D.¹ Mill Valley contends that the appendices amount to new evidence which require authentication to insure that the information presented is accurate. In its motion to strike, Mill Valley contends that the information presented in the appendices is inaccurate. Mill Valley then states that it reviewed the data underlying the appendices. It states that it independently calculated the amount of time Student spent out of his general education classroom, which is one of the primary issues in contention in this case, and determined that Student's calculations are incorrect. Mill Valley did not provide a clear explanation in its motion of how it arrived at the amounts of time it calculated. Mill Valley did not include the calculations in its closing brief.

On June 26, 2015, Student filed an opposition to Mill Valley's motion. Student contends that his appendices are not new evidence but rather only amount to part of the argument contained in his closing brief.

Student is not offering the appendices as evidence. The charts are merely a distillation of information that has been admitted into evidence. However, Mill Valley has demonstrated potential prejudice by Student's inclusion of charts that Mill Valley has not been given an opportunity to dispute. Additionally, if the charts are merely portions of

¹ It is unclear from Mill Valley's motion whether it inadvertently did not move to strike Appendix E, or whether it is not contesting it.

Student's closing argument, the inclusion of the pages causes Student's closing brief to exceed the 30-page limit directed by the Administrative Law Judge.

Rather than striking the appendices, or striking the portions that exceed the page limit for the closing briefs, it is appropriate to permit the parties to respond to each other's calculations. The matter shall therefore be continued to permit the parties to provide additional briefing in support of their arguments and calculations of time they contend Student was not receiving instruction in his general education classroom.

Mill Valley may file a brief in response to the information in Student's Appendices B through E. The brief may not exceed five pages. It shall not cover any topic other than the information contained in the appendices and any evidence Mill Valley wishes to point out that contradicts the assertions in the appendices. Mill Valley must file the brief no later than 5 p.m. on Monday, July 6, 2015.

Student may file a response to Mill Valley's brief no later than 5:00 p.m. on Monday, July 13, 2015. The response may not be longer than five pages and may not cover any topic or issue other than what Mill Valley addresses in its additional briefing.

IT IS SO ORDERED.

DATE: June 29, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings