BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019050382

ORDER GRANTING MOTION TO EXCLUDE CONFIDENTIAL COMMUNICATIONS; ORDER REQUIRING STUDENT TO REFRAIN FROM FILING EVIDENCE INTENDED TO BE USED AT HEARING; AND ORDER OF DISQUALIFICATION

On July 9, 2019, Mount Diablo Unified School District filed with the Office of Administrative Hearings, called OAH, a motion to exclude two documents filed by Student. Mount Diablo seeks to exclude Student's June 25, 2019 filing entitled, "Mediation Correspondence and Issues Remaining." It also seeks to exclude Student's July 8, 2019 letter entitled, "Delaying Needed Services Already Indicated in Current IEP for Fall 2019 School Year." Mount Diablo asserts both of these documents impermissibly reference confidential communications. Student has not filed a response.

APPLICABLE LAW

Mediation and settlement discussions are confidential. (20 U.S.C. § 1415(e)(2)(G); 34 C.F.R. § 300.506 (b)(8); Cal. Code Regs., tit. 5, § 3086, subd. (b).) Anything said and any document prepared pursuant to mediation is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication in an adjudicative proceeding. (5 Cal. Code Regs., § 3086, subd. (b)(1).) No reference to mediation proceedings, the evidence produced, or any other aspect of the mediation may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose. (5 Cal. Code Regs., § 3086, subd. (b)(2).)

All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential. (Evid. Code, § 1119, subd, (c).)

DISCUSSION

On June 25, 2019, the parties participated in a confidential special education mediation with one of OAH's mediators. That same day, Student filed with OAH a document that impermissibly references confidential mediation proceedings. On June 26, 2019, Student filed a separate three-page letter entitled "Re: Post-Mediation Offers." Although Mount Diablo did not specifically reference this filing, this letter also references confidential settlement discussions and offers to compromise arising from the mediation process. Student's July 8, 2019 letter continues to reference confidential offers to compromise.

Mount Diablo's motion seeks to exclude Student's filings from the case record as they violate the confidentiality provisions which govern the mediation process.

Student's letters detailed herein contain confidential information. Accordingly, Mount Diablo's motion is GRANTED. OAH will ensure each document is password protected or locked in its case management system. This prevents assigned administrative law judges from reviewing or considering these documents.

Having reviewed confidential communications in determining the pending motion, the undersigned administrative law judge hereby disqualifies herself from presiding over the hearing in this matter or ruling on any further contested motions.

It appears that Student has filed numerous letters and attachments with OAH in support of her proposed resolutions for hearing. Student is hereby advised that any document she intends to introduce into evidence at hearing in support of her issues and proposed resolutions are not to be served on OAH prior to the due process hearing.

The evidence Student intends to offer at hearing must be placed in a three ring binder with a detailed table of contents and an exhibit tab for each separate document, labeled consecutively beginning with "S-1," denoting Student's first document, through the final document. This binder must be provided to Mount Diablo's counsel at least five business days prior to the first day of hearing and provided to the ALJ in the hearing room on the first day of hearing. These and other hearing requirements will be discussed with the parties at the prehearing conference scheduled for August 12, 2019, at 1:00 p.m.

OAH will not be considering or taking any action on proposed evidentiary documents Student files in support of her proposed resolutions. Student is hereby ordered to submit to OAH only written motions or required documents such as a prehearing conference statement, but not the evidence intended to be offered at hearing.

ORDER

1. Mount Diablo's motion to exclude is granted.
2. Student's June 25 and 26, 2019, and July 8, 2019 letters shall be password protected or locked as confidential documents in the OAH case management system.
3. Student shall refrain from filing with OAH any documents she intends to introduce into evidence at hearing.
4. The undersigned administrative law judge hereby disqualifies herself from presiding over the hearing in this matter or issuing further orders as to any disputed substantive matters.

DATED: July 12, 2019

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings