BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016020236 ORDER DENYING MOTION TO STRIKE DISTRICT'S RESPONSE

Parent on behalf of Student filed a Request for Due Process (complaint) on February 1, 2016. District filed a Response to Student's complaint on February 11, 2016. Student filed a Motion to Strike District's Response on February 16, 2016. District filed a response to Student's motion on February 19, 2016. Student filed a reply to District's response on February 22, 2016.

APPLICABLE AUTHORITY

The Individuals with Disabilities Education Act, its enabling regulations and related state authorities do not contain provisions governing a motion to strike in special education proceedings. 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.

The IDEA does not require a responding party to file a response to a due process hearing request with OAH. Title 20 United States Code section 1415(c)(2)(B)(i)(II) allows a responding party to challenge the sufficiency of the due process complaint notice, for the purpose of insuring proper notice to the responding party as to the claims raised in the complaint. Absent a timely a notice of insufficiency no other response to a due process hearing request is required.

In some cases, the IDEA may require a local educational agency to respond directly to a parent that has filed a due process request. If a local educational agency has not sent prior written notice to a parent regarding the subject matter contained in the parent's due process complaint notice, the local education agency, shall, within 10 days of receiving the complaint, send the parent a response to the complaint, which shall include i) an explanation of why the agency proposed or refused to take the action raised in the complaint; ii) a description of other options that the individualized education plan 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. The non-complaining party shall send to the complainant a response that specifically addresses the issues raised in the complaint. (20 U.S.C. § 1415 (c)(2)(B).) There is no requirement that the written notice must be filed with OAH.

DISCUSSION AND ORDER

Student disputes certain portions of the content of District's response, contending it is insufficient, or contains inappropriate assertions. District contends it met all of the procedural requirements under section 1415(c)(2)(B) in its response. Student relies on California Code of Civil Procedure section 436 as authority for the argument that OAH may strike or dismiss District's response. Section 436 does not apply here because the written notice required to be sent to a parent is not required to be filed with OAH. While the IDEA has specifically addressed that the responding party to a due process complaint may challenge the complaint's sufficiency, it is silent as to any other response to a complaint. . As such, District's response is not a "pleading" in the context of California Code of Civil Procedure section 436.

Student has cited to no applicable authority that empowers OAH to decide whether a response to a due process complaint filed under title 20 United States Code section 1415 is sufficient or to strike a response that District was not required to file with OAH. Therefore, Student's motion to strike is denied.

IT IS SO ORDERED.

DATE: February 25, 2016

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings