BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080353
v.	ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING MOTION TO STRIKE
KIPP BAY AREA SCHOOLS.	

On September 25, 2017, the undersigned administrative law judge issued an order that denied Kipp Bay Area Schools' motion to strike portions of Student's amended request for due process. Kipp Bay Area Schools claims it is the entity that conducts business operations for several Kipp charter schools in the bay area, including Kipp Summit Academy, a middle school Student was enrolled in until the end of the 2016-2017 school year, and Kipp King, a high school Student wishes to attend. The order was made following a prehearing conference conducted by the ALJ. However, the order was made on the basis of Kipp's motion to strike only, not on the basis of a sworn declaration by a Kipp administrator and exhibits which included the applications for charter renewal of Kipp Summit and Kipp King. Following service of the order on Kipp, it resubmitted its motion to strike, and subsequently filed the declaration and exhibits. This second filing is deemed to be a motion for reconsideration.

APPLICABLE LAW

Motion for Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Motion to Strike

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

DISCUSSION

Reconsideration

Kipp has now provided OAH with the administrator's sworn declaration and exhibits which establish new facts, and support other facts alleged in the original motion. Therefore, the motion for reconsideration is granted.

Motion to Strike

Kipp asks, in its motion to strike, that OAH strike portions of the amended complaint, where Student identifies it as a school district, when it is a group of independent charter schools. The additional information contained in the declaration and exhibits bolster's Kipp's motion to strike, but still does not resolve the issue, which raises mixed issues of fact and law. Accordingly, Kipp's motion to strike is denied.

ORDER

1. Kipp's motion for reconsideration is granted.

2. Based on reconsideration of Kipp's motion to strike portions of Student's amended request for due process, Kipp's motion to strike is again denied.

IT IS SO ORDERED.

DATE: September 29, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings