BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FREMONT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021203 ORDER GRANTING STUDENT'S MOTION TO STRIKE DISTRICT'S WRITTEN CLOSING ARGUMENT AND ORDERING DISTRICT TO REFILE IN ACCORDANCE WITH REQUIREMENTS

A due process hearing was conducted in this matter on April 26, and 27, 2017, and May 8, 2017. The parties asked that they be permitted to submit written closing arguments, and this request was granted. The parties were ordered to file closing arguments that were no longer than 10 pages, using 12 point font and double-spaced. The parties filed written closing arguments on May 24, 2017, and the record was closed.

On May 30, 2017, Student filed a motion to strike Fremont Unified School District's written closing argument on grounds that it was formatted in a manner that violated the ALJ's orders concerning the formatting and length of the written arguments. Fremont did not file a response.

APPLICABLE LAW

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. Superior 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."

Section 436, subdivision (b), authorizes "the striking of a pleading due to improprieties in its *form* or in the *procedures* pursuant to which it was filed. This provision is commonly invoked to challenge pleadings filed in violation of a deadline, court order, or requirement of prior leave of court." (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528, as modified on denial of reh'g (Apr. 24, 2008).)

DISCUSSION

On April 28, 2017, the ALJ issued a written order continuing the due process hearing to May 8, 2017. The ALJ formally granted the parties' request to file written closing arguments, which was made on the record on April 27, 2017, in this order. The written order of April 28, 2017, specified that written closing arguments were to be no more than 10 pages in length, double-spaced, and in at least 12 point font. The parties were to file them no later than close of business on May 24, 2017. The order was reiterated at hearing on May 8, 2017.

The parties timely submitted written closing arguments on May 24, 2017, and the record was closed. On May 30, 2017, Student filed her motion to strike Fremont's written closing argument on grounds that the formatting violated the order of April 28, 2017, in that the font size was less than 12 point, and the spacing between the lines was less than double-spaced.

Student's closing brief used 12 point font and was double-spaced in accordance with the word processing program she used. This formatting resulted in a page containing approximately 22 lines. Fremont's closing brief contained 28 lines per page. It appears that the font size was adjusted to a size between 11 and 12 points and the spacing was less than double. As a result, although Fremont's brief was 10 pages in length , it would have been longer if written in 12 point font, double-spaced on plain paper. Accordingly, Student's motion to strike is granted.

The record shall be reopened to permit Fremont to file a compliant written closing argument. Fremont shall have two business days to do so. The record shall close at 5:00 p.m. on June 9, 2017, regardless of whether or not Fremont has submitted a compliant closing argument. No new arguments may be introduced in the new brief, and nothing in Fremont's stricken closing argument will be considered by the ALJ.

ORDER

1. Student's motion to strike Fremont's written closing argument is granted. The ALJ shall not consider anything discussed or cited in the written closing argument it filed on May 24, 2017.

2. The record in this matter shall be reopened and shall close at 5:00 p.m. on June 9, 2017, to permit Fremont to file a compliant written closing argument.

3. If Fremont chooses to file another written closing argument, it shall be on plain paper, with 12 point font, and it shall be double-spaced. It shall be no more than 10 pages in length. No new arguments can be raised in this document.

IT IS SO ORDERED.

DATE: June 6, 2017

DocuSigned by:
Rebecca Freie
D1AE8D9E81A848C...

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings