BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022010333

ORDER GRANTING MOTION TO STRIKE EXHIBIT 1 FROM THE MOTION TO AMEND

JUNE 9, 2022

On January 12, 2022, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Los Angeles Unified School District. The Office of Administrative Hearings is referred to as OAH.

The parties participated in a second mediation on May 26, 2022.

On June 1, 2022 Student filed a Motion to Amend the Due Process Hearing Request, along with a declaration supporting the motion, attaching as Exhibit 1 an email thread regarding the parties' communications during mediation and following up on those discussions.

On June 1, 2022, Los Angeles Unified filed a notice of non-opposition and a motion to strike Exhibit 1 because it contained confidential settlement communications.

On June 2, 2022, OAH granted the motion to amend, stating that the motion to strike would be addressed by a separate order. Student was ordered to file any response or opposition by June 6, 2022 at 5:00 PM. OAH received no response or opposition from Student.

APPLICABLE LAW AND DISCUSSION

Mediation, which can take many forms, is one type of alternative dispute resolution. (*Rojas v. Superior Court* (2004) 33 Cal.4th 407, 415 (*Rojas*); *Saeta v. Superior Court* (2004) 117 Cal.App.4th 261, 269–270.)

Mediation confidentiality is codified in Evidence Code section 1115, et seq. This evidentiary restriction is not limited to those communications made "in the course of mediation. [Citation.]" (*Rojas, supra*, 33 Cal.4th at p. 417.) Rather, as delineated in Evidence Code section 1119, the restriction applies to any written or oral communication made "for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation," as well as all "communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation...." (Evid. Code, § 1119.) Even after mediation ends, communications and writings protected by the statutes are to remain confidential. (*Wimsatt v. Superior Court*, 152 Cal.App. 4th 137, 152, citing Evid.Code, § 1126; cf. Evid.Code, § 1128 [reference to mediation in subsequent trial is grounds for new trial].)

Here, there can be no doubt that the communications referenced in Exhibit 1 were made pursuant to the discussions had by the parties during mediation. The email says as much, and Student has not offered a different interpretation. Accordingly, the

motion to strike Exhibit 1 from the record is granted and no ALJ will consider any information contained in Exhibit 1.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings