

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT,

OAH CASE NO. 2014090268

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014090535

ORDER OVERRULING
OBJECTION/DENYING MOTION TO
STRIKE STUDENT'S WRITTEN
CLOSING ARGUMENT, BUT
ADMONISHING STUDENT'S
ATTORNEY

On June 18, 2015, at the conclusion of the hearing, Administrative Law Judge Kara Hatfield granted the parties' request to file written closing arguments and ordered that the initial closing briefs be filed by July 7, 2015, and be no more than 40 pages (including the first, caption, page of the document), in Times New Roman 12 point font, and either double spaced or on pleading paper consisting of 28 lines per page. The parties' attorneys had been active in the off-record discussion relating to the parties' request to file written closing arguments. At the time the ALJ stated the order regarding the timing and formatting of written closing arguments, the attorneys were given an opportunity to ask questions about the order; neither Student's nor District's attorney sought clarification.

On July 8, 2015, Student's attorney filed a closing brief that was 45 pages. Student transmitted an incomplete version of the document on July 7, 2015 at 6:32 p.m., and when the Office of Administrative Hearings notified Student's attorney of the incompleteness of the facsimile transmission, Student filed a complete version of the document on July 8, 2015, at 1:11 p.m.

On July 14, 2015, District filed a document titled Objection to the Student's Closing Brief, which requested that Student's closing brief be stricken and not considered when rendering a decision. District objected both to the untimeliness and length of Student's brief.

On July 14, 2015, Student filed an opposition to District's objection/motion to strike, asserting that difficulties with Student's attorney's facsimile machine had caused the tardiness of the filing and that such difficulty constituted "good cause" for the untimely filing. Student claimed that Student's attorney emailed a copy of the document to District's attorney at 5:29 p.m. and District therefore was not prejudiced by the untimeliness of the service and filing. Student also asserted that although the closing argument exceeded the page limit the ALJ ordered, the document contained 1,056 lines of text, including the single spaced headings, but excluding the caption page and the signatures. Student's attorney argued that District's closing argument contained 1,087 lines of text and District therefore had not been prejudiced because Student did not have any more space in which to make his argument than District had. For those reasons, Student urged that District's motion to strike be denied.

District did not cite to any law in support of its objection/motion to strike. Although the California Code of Civil Procedure does not directly apply to cases within the jurisdiction of OAH, provisions of the Code of Civil Procedure are often looked to for guidance in areas for which the Administrative Procedures Act, contained in the Government Code, or the Education Code do not have a specific provision. Code of Civil Procedure section 436 states, "The court may, upon a motion . . . , or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." District's objection to Student's closing argument does not take issue with the contents of the filing, but its untimeliness and excess length. 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).)

In this case, Student's attorney failed to comply with two orders of the ALJ, concerning the deadline for service and filing, and the page limitation. While it would be permissible to strike Student's closing argument either in part, to the extent it exceeded the page limitation, or in its entirety for being too long, or too late, or both, it would not have been helpful to the ALJ, who desired to hear each party's summation of the evidence and articulation of how, exactly, the testimony of 22 witnesses and the contents of 279 exhibits related to the five issues in the case.

Due to the low inconvenience to and impact on District and the high need for identification of the evidence Student felt was most important to his case, District's objection to Student's written closing argument is overruled and District's motion to strike is denied.

Additionally, Student's attorney is admonished for failing to comply with a clear and unquestioned order regarding the length of written closing argument, and for arguing that equivalency of lines of text justified violation of the order. Student's attorney seems to have been able to comply with the order, because she used pleading paper with line numbering for

28 lines; however, she did not correctly format the line spacing to take advantage of the space available, resulting in only 24 lines of text on each page. Student's attorney should exercise greater care in the preparation and submission of filings.

IT IS SO ORDERED.

DATE: August 11, 2015

/s/

KARA HATFIELD

Administrative Law Judge

Office of Administrative Hearings