

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100232

ORDER DENYING STUDENT'S MOTION TO STRIKE
PORTIONS OF SAN FRANCISCO UNIFIED SCHOOL
DISTRICT'S RESPONSE

OCTOBER 26, 2021

On October 7, 2022, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Francisco Unified School District as respondent. On October 19, 2022, San Francisco filed a response to Student's complaint. On October 21, 2021, Student filed a motion to strike portions of its response. On October 26, 2021, San Francisco opposed Student's motion to strike.

The Individuals with Disabilities Education Act requires a school district to send a response to the complaint, within 10 days of receiving it, if the local education agency

has not previously sent a prior written notice to the parent regarding the subject matter contained in the complaint. (20 U.S.C. §1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508(e) (2006); Ed. Code §56502(d)(2)(B).) The response shall include an explanation of why the agency proposed or refused to take the action raised in the complaint; a description of other options that the individualized education program 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. (*Ibid.*)

Although the California Code of Civil Procedure does not directly apply to cases within OAH's jurisdiction, 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 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."

Here, Student requests that OAH strike paragraph 32 on page 8 of San Francisco's response referring to a triennial evaluation and assessment plan, and argues that any discussion regarding them, including the procedures and parameters, are neither an appropriate response nor an affirmative defense because these issues were not raised in the complaint. San Francisco maintains that Student raised these issues in the complaint, and if she did not, it has an obligation in its response to comply with the Individuals with Disabilities Education Act and California Education Code by describing each evaluation procedure.

Here, Student's complaint states on page three under "SUMMARY OF COMPLAINT" that San Francisco failed to provide Student a free appropriate public education for the 2021-2022 school year for a variety of reasons, including "...failing to complete in a timely manner a comprehensive IEP, triennial evaluation, and periodic assessment of student's progress..." In San Francisco's response, paragraph 32, San Francisco describes a triennial evaluation and assessment plan and makes related factual arguments asserting that it did not deny Student a free appropriate public education. Student has failed to provide an authority authorizing a motion to strike a portion of San Francisco's response. Furthermore, the information included in San Francisco's response complies with the requirements of the Individuals with Disabilities Education Act. (20 U.S.C. § 1415 (c)(2)(B)(i)(I).) Accordingly, Student's motion to strike portions of San Francisco's complaint is denied.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Cynthia Fritz".

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings