BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT AND COMMUNITY ROOTS ACADEMY.	OAH Case No. 2017020910 ORDER DENYING STUDENT'S MOTION TO STRIKE WITNESS TESTIMONY

On June 12, 2017, Parent on behalf of Student filed a closing brief which contained a motion to strike the testimony of Myla Candelario from the record. Student contends Ms. Candelario's disclosure at hearing regarding details of the resolution session and her observation at UCI CDS was confidential communications which occurred through mediation or the settlement process.

On June 14, 2017, Capistrano Unified School District and Community Roots Academy filed an opposition to the motion to strike witness testimony. District and Academy argue that no mediation took place between the parties and no disclosure made by Ms. Candelario was discussed in any mediation.

On June 15, 2017, Student filed a response to District and Academy's opposition contending that resolution meeting was confidential and Ms. Candelario's testimony breached the confidentiality of the resolution meeting.

APPLICABLE LAW AND DISCUSSION

There are no provisions governing a motion to strike witness testimony in special education hearings. Therefore, OAH looks to the California Code of Civil Procedure for guidance. Section 436 authorizes a court to 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."

It is well-established that special education mediation is a confidential proceeding. "Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation . . . is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding." (Cal. Code Regs.,

tit. 5, § 3086, subd. (b)(1).) This includes any activities or actions of parties pursuant to the mediation process. (Cal. Code Regs., tit. 5, § 3086, subds. (b)(2) and (3).) "Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing…." (34 C.F.R. § 300.506(b)(8).)

Student does not allege, nor is there any factual support, that Ms. Candelario's testimony disclosed any confidential communications made during mediation. No mediation took place between the parties.

At hearing, Mother raised the issue of whether Respondents provided her with all educational records. Some testimony involved the content of educational records provided to Mother on the date of the resolution session. However, the parties were instructed not to discuss the content of any settlement negotiations and did not do so.

Student fails to establish that Ms. Candelario's testimony at hearing disclosed any confidential communication protected by federal or state law or by agreement between the parties.[1] Therefore, Student's motion to strike Ms. Candelario's testimony is denied.

ORDER

Student's motion to strike the testimony of Myla Candelario from the record is denied.

DATE: July 11, 2017

DocuSigned by:

COLE DALTON
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Administrative Law Judge
Office of Administrative Hearings

[1] Student asserts that the resolution meeting was confidential and refers to an "Exhibit A" in his opposition to District and Academy's opposition but OAH did not receive any exhibits attached to Student's opposition.