BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018030397 ORDER DENYING STUDENT'S MOTION TO STRIKE

Student filed a request for a due process hearing naming Berkeley Unified School District on March 8, 2018. Student then filed a motion to amend his due process request on May 10, 2018. Berkeley filed a notice of non-opposition and Student's motion to amend was granted on May 14, 2018. On June 27, 2018, Berkeley filed with Student and OAH its response to Student's amended request for due process complaint.

On June 29, 2018 Student filed its motion to strike requesting OAH strike Berkeley's response from the record and order Berkeley to serve a legally compliant response on Student, or in the alternative, shift the burden of proof to Berkeley. Berkeley did not respond to Student's motion to strike.

APPLICABLE LAW

The IDEA requires a school district to respond to a parent's due process complaint within 10 days. (20 U.S.C. §§ 1415(c)(2)(B)(i)(I) & 1415(c)(2)(B)(ii).) These procedural safeguards provide for two avenues for a district to provide a response to a parent: a prior written notice or a response to due process complaint. The Ninth Circuit in *MC v. Antelope Valley* held "a response serves an important dual purpose: It gives notice of the issues in dispute and binds the answering party to a position." *M.C. by & through M.N. v. Antelope Valley Union High Sch. Dist*., (2017) 858 F.3d 1189, 1199–1200 (9th Cir.), cert. denied sub nom. *Antelope Valley Union High Sch. Dist. v. M.C. ex rel. M.N*., 138 S. Ct. 556, 199 L. Ed. 2d 437.

Student alleges Berkeley failed to timely respond to Student's amended request for due process. The IDEA requires the school district to send a response to the parent within 10 days of receiving the complaint. (20 U.S.C. § 1415(B)(i)(I).) This obligation does not require the district to serve on OAH a copy of their response. However, Berkeley at the same time it served its response on Student also provided a copy to OAH. Berkeley's response was untimely.

However, Student's requested remedies are not available. As the *MC* court instructed, when a district has failed to filed a timely response, the ALJ must order a response. Here, Berkeley, while tardy, has complied with this directive. (*MC v. Antelope Valley, supra*, 858 F.3d 1189, 1199–1200.) Student provided no legal authority authorizing OAH to switch the burden of proof in a Student filed due process hearing over a question of sufficiency of Berkeley's response to due process.

Student further alleges Berkeley's response is insufficient and leaves Student "with no clue as to what claims she needs to prove." Berkeley acknowledged in its response insufficiencies in its procedural and substantive obligations. Berkeley, by and through its response, acknowledges Student's complaints, its proposed remedies, puts Student on notice it disputes some of the allegations, but also acknowledges the existence of procedural and substantive compliance failures. Thus, Berkeley's response was within the intent the *MC* court laid out of "binds the answering party to a position."

ORDER

Student's motion to strike is DENIED.

DATE: July 6, 2018

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Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings