BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2019040516 ORDER DENYING MOTION TO COMPEL AND SHIFT COSTS

Student filed a request for due process hearing naming Alum Rock Union elementary School District on April 11, 2019. On May 21, 2019, Student filed a motion seeking an order compelling Alum Rock Union Elementary School District to file a response to Student's due process complaint, and shifting costs of the delay to Alum Rock.

On May 22, 2019, the parties filed a stipulation to continue the hearing dates set for June 4, 5, and 6, 2019, and to schedule mediation. OAH granted their request on the same day and set mediation for June 24, 2019, and continued the hearing to July 23, 24, and 25, 2019.

On May 24, 2019, Alum Rock filed a response to the complaint with the Office of Administrative Hearings and an opposition to Student's motions to compel. On the same day, Student filed another motion to compel a response and for shifting of costs of delay. The motion was identical to the motion filed on May 21, 2019.

State and federal law require a local education agency to respond to a due process complaint. (Ed. Code, §56502, subd. (d)(2)(A); 20 USC § 1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508.); *M.C. by and through his guardian ad litem M.N. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1199-1200 (*MC*).) Both the Education Code and Title 20 United States Code section 1415(c)(2)(B)(i)(I) require a local educational agency to "send to the parent a response" to the due process complaint, if the school district has not sent prior written notice to the parent regarding the subject matter contained in the parent's due process complaint. The response to the complaint must be sent to the parent within 10 days of receiving the complaint. Title 20 United States Code section 1415(c)(2)(B)(i)(I)(aa) through (dd) itemizes what should be contained in the response. The IDEA does not, however, provide for any remedy for a local educational agency's failure to send a timely response to the parent, nor does it require the local educational agency to file the response with OAH.

Student argues that *M.C., supra at* 858 F.3d pp.1199-1200, should apply here. In *M.C.*, the Ninth Circuit Court of Appeal addressed the import of a school district's failure to respond to a complaint filed by the student at any time before due process hearing. In dicta, the Court noted when a school district does not file a timely response, the hearing officer must not go forward with the hearing. As a remedy for the failure to respond, the Court suggested that the hearing officer must order a response and shift the cost of the delay to the school district. However, *M.C.* involved an entirely different set of facts to this case, and does not apply here.

While acknowledging that Alum Rock did not serve a response to the complaint before May 24, 2019, Alum Rock's counsel stated in her declaration that she and Student's counsel were negotiating dates for a continuance of the due process hearing at the time Student's counsel filed his first motion to compel on May 21, 2019. Student requested that Alum Rock agree to the continuance to1) allow Alum Rock time to complete an independent educational evaluation of Student, and 2) so the parties could mediate. The parties filed a stipulation to continue and set mediation which OAH granted two days before Alum Rock served and filed its response to the complaint.

Accordingly, there is no basis to shift costs as the result of any delay, because the hearing in this matter is set for late July 2019 at the parties' request, and mediation is scheduled on June 24, 2019. Student has not demonstrated any prejudice caused by Alum Rock's delay in serving its response. Student's motion is denied.

IT IS SO ORDERED.

DATE: June 5, 2019

DocuSigned by:
AdrienneL. Krikorian
3475616B5EDF4C6...

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings