BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALAMEDA UNIFIED SCHOOL DISTRICT and OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017101092 ORDER DENYING STUDENT'S MOTION TO COMPEL A RESPONSE

On October 24, 2017, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings naming Alameda Unified School District and Oakland Unified School District. On November 3, 2017, Student filed a motion asking that OAH order Alameda to file a response to the complaint. On November 9, 2017, Alameda filed an opposition to the motion with OAH. Attached to the opposition as an exhibit was a copy of its response dated November 9, 2017. A proof of service attached to the opposition shows that it was served upon Student's attorney on the same date via email.

APPLICABLE LAW

When a student files a complaint pursuant to the Individuals with Disabilities Education Act, with the Office of Administrative Hearings, the IDEA requires the named school district to provide a written response to the complaint within 10 days of filing. (20 U.S.C. § 1415(c)(2)(B); Ed. Code § 56502 subd. (d)(2)(A).) The Ninth Circuit recently emphasized the importance of the school district's response in *M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, at pages 1199-1200. The court held that OAH could not hear a case unless the school district has provided the student with a written response to the complaint. If a response is not provided to the student, he is forced to prepare for hearing without knowledge of his opponents defenses. This is particularly true in IDEA cases because there is no discovery process. (*Ibid.*)

DISCUSSION

In his motion, Student asks that OAH order Alameda to file a response to the complaint he filed on October 24, 2017. Student also asks that OAH order Alameda to pay its costs for the motion (shift costs to Alameda) if a response is not filed within five "court

days." OAH deems the term "court days" to mean regular business days, Monday through Friday, excluding state holidays. As previously noted, on November 9, 2017, Alameda filed its opposition to the motion with OAH, with the response attached as an exhibit. Student's attorney was duly served, according to the attached proof of service. Accordingly, Student's motion is denied because it is now moot. Three business days elapsed between the filing of Student's motion and the filing of Alameda. Therefore, Alameda filed its response within five business days after Student filed his motion, so Student's request that costs be shifted is denied.

ORDER

1. Student's motion to compel OAH to order Alameda to file a response is denied.

2. Student's request that OAH shift costs for filing the motion to Alameda is denied.

IT IS SO ORDERED.

DATE: November 13, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings