BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017090367
v.	ORDER DENYING STUDENT'S REQUEST TO COMPEL DISTRICT'S RESPONSE; TO CONTINUE; TO SHIFT COSTS
LIBERTY UNION HIGH SCHOOL DISTRICT.	

On September 11, 2017, Parents on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing (complaint) naming Liberty Union High School District. On September 12, 2017, District filed a notice of representation.

On September 18, 2017, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint) which OAH granted on November 8, 2017.

On November 1, 2017, Student filed a motion to compel District to file a response to her complaint. On November 8, 2017, OAH ordered District to respond to Student's amended complaint by November 20, 2017, or if District had already responded to file the response with OAH. On November 9, 2017, OAH received District's response to Student's complaint.

On December 8, 2017, Student filed a motion to order District to file a response to the amended complaint, request for continuance, and shift costs. District filed a supplemental response to Student's complaint and an opposition to Student's motion to compel, continue, and shift costs on December 11, 2017. Student filed a reply on December 12, 2017.

APPLICABLE LAW AND DISCUSSION

State and federal law require a local education agency to respond to a due process complaint within 10 days of receiving the complaint. (Ed. Code, § 56502(d)(2)(A); Individuals with Disabilities Act, 20 U.S.C. § 1415(c)(2)(B)(i)(I); 34 C.F.R., § 300.508.) Accordingly, District was required to provide a response to Student's complaint on September 21, 2017. However, Student filed a motion to amend the complaint before District's response was due and OAH did not grant Student's motion to amend her complaint until November 8, 2017.

The case of *M.C. by and through his guardian ad litem M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, states:

> When a school district fails to file a timely answer, the ALJ must not go forward with the hearing. Rather, it must order a response and shift the cost of the delay to the school district, regardless of who is ultimately the prevailing party.

(*Id*, pp. 1199-1200.)

District filed a response to Student's complaint with OAH on November 9, 2017. District's response was dated November 3, 2017, and the proof of service stated it was served on Student on November 3, 2017. After District responded to Student's complaint, but before said response was filed with OAH, OAH ordered District to respond to Student's amended complaint. OAH specified that if District had already responded to Student's complaint it need only file that response with OAH. District's complied with OAH's order by filing its response to Student's complaint with OAH on November 9, 2017.

District persuasively argued that a subsequent response to Student's amended complaint was not necessary. OAH's November 8, 2017 order directed District to file a response to the amended complaint only if it had not already responded to Student's complaint. Additionally, District filed a supplemental response to Student's complaint on December 11, 2017. Accordingly, Student's motion to compel a response, continue the due process hearing, and shift costs is denied.

IT IS SO ORDERED.

DATE: December 18, 2017

DocuSigned by:
Linda Johnson
5092A92341544B9...

LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings