BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010480

ORDER DENYING REQUEST FOR A MORE DEFINITE ANSWER

JANUARY 28, 2021

On January 15, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Bellflower Unified School District.

On January 25, 2021, Bellflower filed and served its response to the complaint. It alleges, among other things, that it served timely prior written notices regarding the subject matter of the complaint, and that the issues are precluded by the prior filings, barred by the statute of limitations and outside of OAH's jurisdiction. It also asserts that Parent obstructed Bellflower's attempts to comply with the law, there are no grounds for

some of the recovery requested by Student and one claim in the complaint is unintelligible.

On January 25, 2021, Student filed a Request for a More Definite Answer. Student contends Bellflower's response is inadequate because it fails to address many of the allegations in Student's complaint and Student fears that Bellflower will attempt to raise new defenses at hearing, denying Student's ability to prepare for hearing.

On January 28, 2021, Bellflower filed opposition to Student's motion. Bellflower argues this is the sixth due process filing Student has filed against Bellflower, and Student is aware of Bellflower's position. It also argues that it has both generally and specifically responded to each of the claims, and there is no authority for the motion.

On January 28, 2021, Student filed a reply to the opposition. Student argues that the motion is based on "*M.C. v. Antelope Valley Union High School District,* 852 F.3d 840, 851 (9th Cir. 2017)." Student acknowledges that Bellflower has raised defenses in its response, but any other defenses should be precluded.

APPLICABLE LAW AND DISCUSSION

The Individuals with Disabilities Education Act requires a school district to provide prior written notice to parents whenever it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to the child. (20 U.S.C. § 1415(b)(3).)

State and federal law require school districts to respond to a due process complaint within 10 days of receiving the complaint, if the school district has not previously sent a prior written notice to the parent regarding the subject matter contained in the complaint. (20 U.S.C. § 1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508(e); Ed.

Code, § 56502, subd. (d)(2).) Title 20 United States Code section 1415(c)(2)(B)(i)(I)(aa) through (dd) itemizes what should be contained in the response.

Recently, the Ninth Circuit Court of Appeals held that when a school district fails to file a timely answer, the Administrative Law Judge, known as an ALJ, must not go forward with the hearing. Rather, the ALJ must order a response and shift the cost of any delay to the school district. (*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.)

Here, Student has challenged the sufficiency of Bellflower's response to the complaint. Student cites no persuasive authority which permits her to contest the sufficiency of a school district's response, as opposed to the lack of any response, as a pre-hearing motion and condition of proceeding to hearing. Although title 20 United States Code section 1415(c) permits a responding party to file a notice of insufficiency to challenge the sufficiency of a complaint, there is no similar provision in the law pertaining to a district's response to the complaint. To the extent Student is attempting to limit the evidence presented at hearing, that request is premature. Accordingly, Student's motion is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings