BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COMPTON UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019010809 ORDER DENYING MOTION TO COMPEL DISTRICT TO PROVIDE A COMPLIANT RESPONSE, REQUEST TO CONTINUE AND SHIFT COSTS OR ALTERNATIVELY TO PRECLUDE DISTRICT FROM PRODUCING EVIDENCE AT HEARING

Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings on January 23, 2019, naming Compton Unified School District as Respondent. Compton filed a Response to Student's complaint on February 11, 2019. On March 6, 2019, OAH granted the parties' request to continue the due process hearing to allow them to participate in mediation. The prehearing conference is set for May 13, 2019 at 10:00 a.m. The due process hearing is set for May 21, 22, and 23, 2019.

On April 30, 2019, Student filed the instant motion. Compton filed an opposition to the motion on May 6, 2019.

LEGAL AUTHORITY AND ANALYSIS

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.

Student argues that Compton did not serve Parent with a prior written notice at any time before the complaint in this matter was filed. As such, Student argues Compton was required to file a response to the complaint that complied with the IDEA. Student does not dispute that Compton served Parent with a response or that it also filed that response with OAH. Instead, Student objects to the content of the response, contending that it did not

contain the level of detail required by the IDEA. Student argues that Compton's responses to each of the three issues identified in Student's complaint is the same, and lacks specific facts, denials or arguments about the issues and facts. Student claims this puts Student at a serious disadvantage because Student does not know what Compton will present and argue at hearing.

The IDEA provides for a specific process to challenge a due process complaint through a notice of insufficiency. (See, 20 USC § 1415(c)(i)(B)(II).) However, Student has cited to no authority in the IDEA or Education Code that provides for challenging the sufficiency of a *response* to the due process complaint.

Instead, Student argues that, by analogy, *M.C., supra at* 858 F.3d pp. 1199-1200, should apply. 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.

Student asks OAH to continue the due process hearing and order Compton to serve a response that complies with title 20 United States Code section 1415(c)(2)(B)(i)(I). Alternatively, without citing to any applicable authority, Student seeks an order prohibiting Compton from introducing any evidence at hearing or making any argument not contained in its response. Compton persuasively opposes the motion arguing that Student cited to no authority supporting a motion to compel or preclusion of evidence.

In the absence of any authority that empowers OAH to make such orders, Student's motion is denied. All dates are confirmed. PHC statements and prehearing motions shall be filed no later than three business days before the PHC.

IT IS SO ORDERED.

DATE: May 7, 2019

DocuSigned by:
Adrienne L. Krikorian
3475616B5EDF4C6...

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings