BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>TORRANCE UNIFIED SCHOOL DISTRICT. | OAH Case No. 2016120826<br><br>ORDER REQUIRING FURTHER BRIEFING RE: THE STATUTE OF LIMITATIONS; REQUIRING FILING OF A RESPONSE TO THE DUE PROCESS COMPLAINT; AND EXTENDING DECISION TIMELINE |

On March 27, 2017, the Ninth Circuit Court of Appeals issued its opinion in the matter of *M.C., etc. et al. v. Antelope Valley Union High School District* (9th Cir. March 27, 2017, No. 14-56344) __F.3d__ [2017 WL 1131821]. (*M.C.*) Among other things, the court noted that the school district in that case had violated 20 U.S.C. § 1415 (c)(2)(B)(i)(I) by not providing an answer to the Student's due process complaint, and emphasized the importance of such an answer to give notice of the issues, bind the answering party to a position, and to avoid prejudice to the opposing party at hearing. (*M.C., supra,* p. *5.)

The court's decision in *M.C.* has particular relevance to this case, which was heard over the course of four days in February 2017. In this case, OAH has no record that Torrance Unified School District ever served on Student or filed with OAH a response to Student's due process hearing request (Complaint). Neither party mentioned at any time during the course of the proceedings whether District had filed a response to the Complaint. Yet, in its closing brief filed in the case on March 20, 2017, District raised, apparently for the first time, the defense of statute of limitations with respect to Student's claims regarding the adequacy of the services and goals offered in Student's individualized educational program of September 25, 2014. This defense was not raised in District's prehearing conference statement. It was not raised at the PHC or included in the PHC Order. It was not raised at hearing or addressed in Student's closing brief. It was not brought to the attention of the ALJ at any time prior to OAH's receipt of District's closing brief. Had District served and filed a response to Student's Complaint, presumably it would have included the defense of the statute of limitations therein, and Student would have had notice of it and been able to address it during the proceedings in this case. Moreover, insofar as the parties' closing briefs were filed simultaneously, as opposed to serially, Student has had no opportunity to respond to District's recently developed contentions pertaining to the statute of limitations.

Based upon the court's decision in *M.C., supra,* in the interests of providing due process to all parties in this matter, and in light of the foregoing circumstances, the ALJ orders as follows:

1. By no later than **5:00 p.m. on April 11, 2017**, Student shall file with OAH and serve on District a supplemental closing brief addressing District's contentions regarding the applicability of the statute of limitations. Student's brief shall also address (a) whether District has waived the statute of limitations; and (b) whether Student must present additional evidence to demonstrate that the statute of limitations does not apply, or that an exception to the statute of limitations applies.

2. By no later than **5:00 p.m. on April 18, 2017**, District shall file a responsive brief.

3. By no later than **noon on April 3, 2017**, District shall file with OAH and serve on Student a response to Student's Complaint that specifically addresses the issues raised in Student's Complaint and any other matters required pursuant to Education Code section 56502, subdivision (d)(2)(B) and (D), so that the record is complete. If District has already served a statutory response to Student's Complaint, District shall file that response with OAH by noon on April 3, 2017, and such filing shall be deemed sufficient compliance with this Order.

4. The matter is continued as of the date of this Order, until April 18, 2017.

IT IS SO ORDERED.

DATE: March 28, 2017

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Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings