

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090242

ORDER DENYING STUDENT'S MOTION TO COMPEL
RESPONSE TO DUE PROCESS COMPLAINT

OCTOBER 11, 2021

On September 8, 2021, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings naming Antioch Unified School District., referred to as Antioch. On September 20, 2021, Antioch filed a response to the due process complaint.

On October 4, 2021, Student filed a motion to compel a response from Antioch. Student's motion sought an order compelling Antioch to file a further response to the due process complaint on the basis Antioch's response did not meet the statutory requirements under applicable state and federal law. Antioch filed an opposition to Student's motion to compel on October 8, 2021. Antioch argued that it was not

required to file a detailed response to the complaint since it had previously sent prior written notices to Student's parents regarding the subject matter of the due process complaint.

State and federal law require a local educational agency to respond to a due process complaint. (20 U.S.C. § 1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508(e)(1)(i); Ed. Code, § 56502, subd. (d)(2)(A); *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 (*M.C.*.) California Education Code section 56502(d)(2)(A)-(B) 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) sets forth the requirements of the response to a due process complaint where a local educational agency has not issued a prior written notice. The response shall include an explanation why the agency proposed or refused to take action raised in the complaint; a description of other options that the individualized education program, called IEP, team considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and a description of the factors that are relevant to the agency's proposal or refusal. (*Id.*)

Antioch argues it sent parents prior written notice as required by 20 U.S.C. section 1415(b)(3) whenever it proposed to initiate or change or refused to initiate or change the identification, evaluation, or educational placement of Student, or the

provision of a free appropriate education to Student. Antioch's opposition brief was not supported by a sworn declaration, and it did not provide any information about the content of the prior written notices or the dates they were issued, especially as its September 20, 2021 Response to Due Process Complaint does not state that Antioch provided prior written in early documents provided to Parents. Instead, Antioch attempts to shift the burden to Student to prove that Antioch did not serve a prior written notice. Antioch asserts Student is obligated, "to prove that [Antioch] failed to provide prior written notice as contemplated by (the Individuals with Disabilities Education Act) [IDEA]." Antioch, not Student, has the burden of proving it either issued a prior written notice involving the subject matter of the complaint, or timely filed a response to the due process complaint in compliance with Title 20 United States Code section 1415(c)(2)(B)(i)(I)(aa) through (dd).

Student's motion alleges that Antioch did not provide parents with a prior written notice regarding the subject matter of the complaint. Antioch could have alleviated any questions by attaching a copy of the prior written notice to its opposition brief supported by a sworn declaration or stating that in its September 20, 2021 Response to Due Process Complaint. Having failed to do so, Student now is in the position of not having either a meaningful response to the complaint or information about the prior written notice Antioch purports to have sent to parents. (20 U.S.C. § 1415(c)(2)(B)(i)(I).)

The IDEA provides for a specific process to challenge a due process complaint through a notice of insufficiency. (20 U.S.C. § 1415(c)(i)(B)(II).) The IDEA does not contain a similar procedure for challenging the sufficiency of a response to a due process complaint. In *M.C.*, the Ninth Circuit Court of Appeals suggested that when a school district fails to timely file a response to a due process complaint, the hearing officer should not proceed with the hearing and should shift the cost of the delay to the

school district. *M.C.* did not address the issue of a party's challenge to the sufficiency of a response to a due process complaint, and therefore is inapplicable here.

Further, as noted by both parties, OAH has routinely held it does not have authority to compel a lead educational agency to provide a response to a due process complaint to comply with 20 U.S.C. § 1415(c)(2)(B)(i)(I).

The United States Department of Education's Office of Special Education Program (OSEP) has offered guidance on the appropriate avenue of relief when a district fails to respond to a complaint in accordance with the requirements of 34 C.F.R.

§ 300.508(e)(1)(i). In *Letter to Inzelbuch* (OSEP August 1, 2013) 113 LRP 32485, OSEP addressed the situation where a parent seeks relief because the lead educational agency failed to comply with 34 C.F.R. § 300.508(e)(1)(i) by not providing the parent with either a prior written notice about the matter that was the subject of the parent's due process complaint, or a response to the due process complaint stating why the lead educational agency refused to take the action sought by the complaint. OSEP opined that a district's failure to respond to the complaint in accordance with the regulation falls within the jurisdiction of the due process hearing offer, and thus can provide the basis for an additional allegation at hearing. OSEP suggested that the appropriate step in this situation would be to add an allegation to the due process complaint. Although OSEP's guidance is not binding authority, it is instructive in addressing the situation where, as here, a student contends the district did not either provide a prior written notice or a response to the due process complaint in conformance with the IDEA. Thus, Student may amend the complaint to allege a violation of procedural rights caused by Antioch's inadequate response.

Based upon the foregoing, Student's motion to compel a further response to the due process complaint is denied on the basis the IDEA and Education Code do not

contain a procedure for challenging the sufficiency of a response to a due process complaint. However, this ruling is without prejudice to Student's right to amend the due process complaint to add an additional allegation based upon Antioch's procedural violation or raise this issue with the Administrative Law Judge at the prehearing conference and due process hearing.

ORDER

1. Student's Motion to Compel Response to Complaint is denied.
2. Student may amend the due process complaint to add an additional allegation based upon Antioch's procedural violation or raise the issue of Antioch's failure to provide a prior written notice or a sufficient response at the prehearing conference and due process hearing.
3. The matter shall proceed as currently scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings