

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090304

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

OCTOBER 05, 2021

Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings on September 13, 2021, naming Los Angeles Unified School District. On September 29, 2020, OAH issued an Order granting the parties' joint request to set mediation.

On September 29, 2020, Student filed a document titled Notice of Procedural violations and Motion to Compel. Student's motion sought an order compelling Los Angeles Unified School District to file a response to the complaint. On October 1, 2021, Los Angeles Unified School District filed an opposition to Student's motion on the basis it filed a response to Student's complaint on September 30, 2021. Los Angeles

Unified School District's opposition was supported by a sworn declaration by Diana M. Massaria, Administrative Coordinator, Due Process Department and a copy of the response to complaint.

Student filed a reply brief on October 1, 2021 and argued the response did not meet the statutory requirements under applicable state and federal law.

APPLICABLE LAW

State and federal law require a local educational agency to respond to a due process complaint. (Ed. Code, § 56502, subd. (d)(2)(A); 20 U.S.C. § 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 (*M.C.*)). 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) sets forth the requirements of the response. 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 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. (*Ibid.*)

Student does not dispute that Los Angeles Unified School District filed its response to the complaint on September 30, 2021, the day after Student filed its motion

to compel. However, Student argues that the content of the response does not comply with the requirements of the Individuals with Disabilities Education Act, called IDEA, because it did not contain the level of detail required by the IDEA. Student also argues that the response failed to specifically admit or deny the allegations of the complaint in accordance with Federal Rules of Civil Procedure 8 and 12.

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.

Based upon the foregoing, Student's motion to compel a further response to the due process complaint is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings