

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120164

ORDER DENYING STUDENT'S MOTION TO COMPEL
FURTHER RESPONSE

DECEMBER 27, 2021

On December 3, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Ventura Unified School District.

On December 13, 2021, Ventura filed and served its response to the complaint. It asserts, among other things, that it timely and appropriately assessed Student in all areas of suspected disability, offered Student appropriate measurable annual goals, placement, services, supports, and accommodations, made clear and coherent offers of individualized educational programs for Student, called IEPs, afforded Parents a meaningful opportunity to participate in the development of Student's educational

program, and properly implemented Student's IEPs. Ventura further asserts that if it did in any way fail to comply with the procedures of the Individuals with Disabilities Education Act, called the IDEA, such errors did not result in any loss of educational opportunity or a deprivation of educational benefits to Student, or seriously infringe on Parents' right to participate in the IEP process.

On December 21, 2021, Student filed a Motion to Compel Responsive Pleading. Student contends Ventura's response is inadequate because it fails to provide information required by a "prior written notice" and title 20 United States Code section 1415(B)(i)(I)(aa)-(dd). Student contends Ventura failed to specifically address many of the factual allegations in Student's complaint and Student fears that Ventura will attempt to raise new defenses at hearing, denying Student's ability to prepare for hearing. Student posits that the motion is based on "*M.C. v. Antelope Valley Union High Sch. Dist.*, 852 F.3d 840, 851 (9th Cir. 2017)."

Ventura did not file a response to Student's motion.

APPLICABLE LAW AND DISCUSSION

The IDEA 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 Ventura'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.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings