BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017110489
v.	ORDER DENYING MOTION TO COMPEL RESPONSE TO DUE PROCESS COMPLAINT
OXNARD SCHOOL DISTRICT.	

On November 8, 2017, Student filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) naming Oxnard School District. Student alleged District denied him a free appropriate public education by failing to appropriately assess him in all areas of need, and failing to offer an appropriate placement, goals and services in the September 2017 individualized education program.

On November 17, 2017, District filed a response to Student's complaint. District denied that it failed to fully evaluate Student in all areas of suspected disabilities. District alleged it did not suspect Student had autism so it did not assess for autism. District stated it provided Student with a FAPE in the least restrictive environment, including 200 minutes per month of speech and language services and that Student was enrolled in District's San Miguel Preschool with appropriate services to meet his preschool needs.

On December 11, 2017, Student filed a Motion to Compel Response to Due Process Complaint. Student contends District's response is inadequate because it fails to comply with the law. Student argues that District provided only a wholesale denial of each of the issues without any explanation or description of the actions it refused to take or any bases for its refusal to take such actions. OAH received no opposition from District.

APPLICABLE LAW AND DISCUSSION

The Individuals with Disabilities Education Act requires a district to send to the parent a response to the parent's due process complaint, within 10 days of receiving the complaint, if the local education agency has not previously sent a prior written notice to the parent regarding the subject matter contained in the parent's complaint. (20 U.S.C. §1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508; Ed. Code §56502, subd. (d)(2).) The response shall include an explanation of why the agency proposed or refused to take the 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.*) The IDEA does not require or prohibit an educational agency's filing of a response with OAH.

Recently, the Ninth Circuit Court of Appeals held that when a school district fails to file a timely answer, the 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 the response to the complaint District filed with OAH. Student cites no authority which permits him to contest the sufficiency of District's response as a pre-hearing motion and condition of proceeding to hearing. Although title 20 United States Code section 1415 (b) and (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. Accordingly, Student's motion is denied.

DATE: December 21, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings