BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021110695

ORDER DENYING MOTION TO STRIKE AND MOTION TO COMPEL A FURTHER RESPONSE TO AMENDED COMPLAINT

MARCH 21, 2022

On November 23, 2021, Student filed a Request for Due Process, referred to as a complaint, with the Office of Administrative Hearings, naming Northern Humboldt Union High School District and Redwood Coast Regional Center. The Office of Administrative Hearings is referred to as OAH. Northern Humboldt filed its response to Student's complaint on December 3, 2021.

On January 8, 2022, OAH granted Student's motion to amend. Northern Humboldt filed its response to Student's amended complaint on January 20, 2022. At the February 25, 2022 prehearing conference OAH granted the parties' request for a

March 8, 2022 mediation and a continuance of the prehearing conference to March 14, 2022 and a continuance of the hearing to March 22 through 24, 2022.

On March 8, 2022, the parties participated in mediation.

On March 9, 2022, Student filed a Motion to Compel a Meaningful Response to Student's Amended Complaint. Student argued Northern Humboldt's response was insufficient because it consisted of boilerplate denials and did not include information about the school district's position on each issue, which Student claims she requires to prepare for hearing. Specifically, Student asserts that ". . . just this week, without prior written notice, [Northern Humboldt] took the position that it cannot implement [Student's] IEP."

On March 14, 2022, OAH held the prehearing conference and granted the parties' request for a second mediation and a continuance of the hearing to May 3 through 5, 2022. The parties argued the motion to compel during the prehearing conference. In the Order following Prehearing Conference, North Humboldt was ordered to file any opposition to the motion by March 16, 2022.

Northern Humboldt filed its opposition to the motion to compel on March 16, 2022. It argues that it has not only responded to Student's complaint and its amended complaint, but on June 23, 2021 and January 28, 2022 gave Student prior written notice regarding the issues in the complaint and amended complaint, attaching copies to the opposition. Northern Humboldt asserts that its response to the amended complaint clearly identifies each issue and its position, and thus, has complied with the law. It claims that Student appears instead to be seeking clarification as to current issues with Student's individualized education program, or IEP, which is not relevant to Student's amended complaint filed in January 2022. Northern Humboldt argues that Student

should not be permitted to use a motion to compel to engage in discovery, instead of properly amending the complaint to add additional issues arising after the amended complaint was filed.

On March 16, 2022, Northern Humboldt also filed a motion to strike Student's motion to compel on the grounds that Student disclosed confidential information learned during the March 8, 2022 mediation and that this disclosure to the hearing judge is highly prejudicial. Specifically, Northern Humboldt points to Student counsel's statement ". . .just this week, without prior written notice, [Northern Humboldt] took the position that it cannot implement [Student's] IEP." Northern Humboldt argues that this information could have only been obtained during the mediation as evidenced by the statement itself and that it was first disclosed at the mediation and there were no other conversations after that between the parties or counsel.

On March 18, 2022, Student filed opposition to the motion to strike. Student argues that the school district's inability to implement Student's IEP was disclosed prior to the mediation, on March 6, 2022, during a telephone call between Parent and the Northern Humboldt special education director. Student also asserts that during the February 25, 2022 prehearing conference, Northern Humboldt appeared to be arguing that Parents were preventing Student from attending school, which was not in its response to the amended complaint. Student also argues that no weight should be given to the assertions by the school district's counsel who obtained a continuance of the hearing based on her illness, but then prepared the opposition and motion.

APPLICABLE LAW AND DISCUSSION

The Individuals with Disabilities Education Act, or IDEA, requires a school district to send to parents a response to the 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).) On its face, the IDEA does not require or prohibit an educational agency's filing of the response to a complaint with OAH.

The Ninth Circuit Court of Appeals has 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. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation is admissible in any administrative action or other noncriminal proceeding in which testimony can be compelled to be given. (Evidence Code § 1119, subd. (a).) Evidence Code section 1120, subdivision (a) provides that evidence otherwise admissible shall not become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation.

Here, the information pertaining to the inability of the school district to implement Student's IEP was disclosed by the school district prior to the mediation, during a March 6, 2022 conversation between Parent and the special education director. As such, Student counsel's statement which is the basis of the motion to strike is not confidential because that information was learned outside the mediation process even though it was repeated by the school district during the March 8, 2022 mediation. Accordingly, Northern Humboldt's motion to strike is denied.

In the motion to compel, Student has challenged the sufficiency of the school district's response to the first amended complaint filed with OAH. Not only did

Northern Humboldt serve Student with prior written notice on January 28, 2022, Student cites no authority which permits Student to contest the sufficiency of the school district's response as a pre-hearing motion, as distinct from a failure to file any response at all. 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 school district's response to the complaint. Accordingly, Student's motion to compel a further response to the amended complaint is also denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings