BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT, COMPTON UNIFIED SCHOOL DISTRICT, KERN HIGH SCHOOL DISTRICT, LOS ANGELES COUNTY OFFICE OF EDUCATION, LOS ANGELES UNIFIED SCHOOL DISTRICT AND ALAIN LEROY LOCKE COLLEGE ACADEMY.

OAH CASE NUMBER 2020060630

ORDER OF DENYING STUDENT'S MOTION TO STRIKE LOS ANGELES COUNTY OFFICE OF EDUCATION'S RESPONSE TO THE AMENDED COMPLAINT

NOVEMBER 5, 2020

On June 18, 2020, Student filed a due process complaint with the Office of Administrative Hearings against educational agencies including some of the above-named parties. The Office of Administrative Hearings is called OAH. On August 31,

2020, OAH granted Student's motion to amend the complaint against the above-named parties. On October 22, 2020, Los Angeles County of Education, called County, filed a response to Student's amended complaint. On November 2, 2020, Student filed a motion to strike County's response as insufficient. On November 4, 2020, County filed an opposition to the motion to strike on the basis that its response was sufficient and responsive to Student's claims.

APPLICABLE LAW

State and federal law require a local education agency to respond to a due process complaint. (Ed. Code, §56502, subd. (d)(2)(A); 20 USC § 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 (MC).) 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) itemizes what should be contained in the response. The IDEA does not provide for any remedy for a local educational agency's failure to send a timely response to the parent, nor does it require the local educational agency to file the response with OAH.

Student seeks an order striking County's response, ordering County to provide a sufficient response which was interpreted by Student as responding to each of her issues separately. Student further seeks an order shifting the costs of Student's hearing preparation to County from the due date of the response to the amended complaint. Student argues that *M.C., supra at* 858 F.3d pp.1199-1200, should apply here.

However, in *M.C.*, the Ninth Circuit Court of Appeal addressed the import of a school district's failure to respond to a complaint filed by the student at any time before due process hearing. In dicta, the Court noted when a school district does not file a timely response, the hearing officer must not go forward with the hearing. As a remedy for the failure to respond, the Court suggested that the hearing officer must order a response and shift the cost of the delay to the school district. However, *M.C.* involved an entirely different set of facts to this case, and does not apply here.

Student does not dispute that County served her with a response to the amended complaint or that it also filed that response with OAH. Instead, Student objects to the content of the response. Student argued that County's response failed to specifically address each of Student's issues separately. The IDEA does not provide, and Student did not cite to, a process by which to challenge the sufficiency of a response.

Further, Student's allegations in both the initial complaint and the amended complaint involved failures to hold a 30-day individualized education program meeting, failure to conduct a functional behavior assessment and triennial assessments. Student argues that County's response was late because County was required to file a response within ten days of receiving the amended complaint, but did not do so until October 22, 2020 depriving Student the information needed to prepare for hearing.

County timely responded to Student's initial complaint on June 26, 2020, but was late in responding to Student's amended complaint. Because the issues in both the initial complaint and the amended complaint against County are the same, Student's contention that County's late response to her amended complaint deprived her of the information needed to prepare for hearing was unsupported. Student did not demonstrate any prejudice from County's delay in responding to the amended complaint beyond a general contention of prejudice.

In the absence of any authority that empowers OAH to make the orders requested in Student's motion to strike, Student's motion is denied.

IT IS SO ORDERED

Sabrina Kong
Sabrina Kong (Nov 5, 2020 15:33 PST)

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings