BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL DISTRICT AND MODESTO CITY SCHOOLS.

OAH CASE NUMBER 2019081052

ORDER DENYING STUDENT'S REQUEST FOR LEGALLY SUFFICIENT RESPONSE FROM MODESTO CITY SCHOOLS

ORDER DENYING STUDENT'S REQUEST FOR A LEGALLY COMPLIANT RESPONSE FROM MODESTO CITY SCHOOLS

On August 27, 2019, Student filed a due process hearing request with the Office of Administrative Hearings, known as OAH, naming Turlock Unified School District and Modesto City Schools. On September 16, 2019, OAH granted Student's motion to file a first amended complaint. On October 21, 2019, Modesto filed a response to Student's first amended complaint.

On December 4, 2019, Student filed a motion for a legally sufficient response to her first amended complaint as to Modesto. Student and Modesto argued the motion at the prehearing conference on December 9, 2019, and it was taken under submission by the undersigned Administrative Law Judge.

LEGAL AUTHORITY

State and federal law require a local education agency to respond to a due process complaint filed on behalf of a child. (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.

Prior written notice before due process is distinguished under the IDEA by the requirement of a response to the complaint following a request for due process on behalf of a child eligible for special education under section 1415(c)(2). Where a school district has not previously provided the parent with prior written notice, the school district must serve a response to the due process complaint after due process has been initiated.

DISCUSSION

Student does not dispute that Modesto filed a response to the first amended complaint. Instead, she argues that it was required to, within ten days of receiving the first amended complaint, to either send prior written notice in response to the complaint and provide information required under title 34 Code of Federal regulations section 300.503, or respond with the components required by title 20 United States Code section 1415(c)(2)(B)(i)(I), and it failed to do so in a timely manner.

Additionally, Student contends that Modesto City Schools failed to provide mandatory information regarding Student's issues, provided generic responses only, and failed to clearly set forth affirmative defenses, thus objecting to the content of the response, and arguing that it did not contain the level of detail required by the IDEA. Student seeks an order finding that the response is insufficient and ordering Modesto City Schools to provide a legally compliant response within three days of the prehearing conference.

The IDEA provides for a specific process to challenge a due process complaint through a notice of insufficiency. (See, 20 USC § 1415(c)(i)(B)(II).) The IDEA does not provide a process by which to challenge the sufficiency of a response. Student has cited no authority in the IDEA or Education Code that conflates the law applicable to prior written notice under title 20 United States Code section 1415(b)(3) and a response to a due process complaint under title 20 United States Code section 1415(c)(2)(B)(i)(I).

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

IT IS SO ORDERED.

DATED: December 12, 2019

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Cynthia Fritz
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Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings