

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040742

ORDER DENYING STUDENT'S
"MOTION TO STRIKE" RESPONSE
TO COMPLAINT AND DENYING
DISTRICT'S REQUESTS FOR
SANCTIONS

On April 18, 2011, Student filed a Request for Due Process Hearing (complaint) naming District as the respondent. On May 19, 2011, District filed a Response. On May 19, 2011, Student filed Motion to Strike District's Response as untimely. On May 20, 2011, District filed an Opposition.

In addition, the papers also contained the following: District's Response contained a Motion for Sanctions contending that Student's prosecution of the complaint was frivolous and in bad faith. Student's Motion to Strike the Response as untimely contained an opposition to District's Motion for Sanctions. District's Opposition to the Motion contained a further motion for additional sanctions arising out of prior motion practice regarding a continuance.¹

APPLICABLE LAW and DISCUSSION

Student's Motion to Strike District's Response as untimely is denied. Federal and State law require that, within 10 days of receiving a due process complaint, a district must send to a parent a response to the complaint that includes detailed information about the reasons the district made the decisions that are addressed in the complaint. (20 U.S.C. § 1415(c)(2)(B); Ed. Code, § 56502, subd. (d)(2).) A district need not send a response to parents if it has previously provided prior written notice of the same information, and the response need only be sent to parents, not filed as part of a due process proceeding. (*Ibid.*) There is no requirement that the response to the parent be filed as part of a due process proceeding, and no statute, regulation, or decision provides for a specific sanction by an ALJ when a district fails to send the response or is tardy in doing so. Accordingly, Student's "Motion to Strike" District's Response is denied.

¹ The parties are hereby requested, in the future, to file Motions as separate documents rather than contained within responses to other filings.

An Administrative Law Judge is authorized to issue sanctions to shift the expenses to a party acting in bad faith, or using tactics that are frivolous or solely intended to cause unnecessary delay to the other party and/or their attorneys. (Cal. Code Regs., tit. 5, § 3088, incorporating Gov. Code, § 11455.30.) Despite extensive argumentation in the papers, District has not established bad faith, or tactics that are frivolous or solely intended to cause unnecessary delay. Accordingly, its motions for sanctions are denied.

ORDER

1. Student's Motion to Strike District's Response to the Complaint is denied.
2. District's Motions for Sanctions, contained within its Response to the complaint and within its Opposition to Student's Motion to Strike, are both denied.

Dated: May 23, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings