BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLEASANTON UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019050361 ORDER GRANTING MOTION TO COMPEL RESPONSE TO COMPLAINT AND DENYING REQUEST TO VACATE HEARING DATES AND SHIFT COSTS

On May 08, 2019, Student filed with the Office of Administrative Hearings a due process hearing request (complaint) naming Pleasanton Unified School District.

On June 14, 2019, Student filed a motion compel Pleasanton's response to the complaint, to vacate the hearing dates, and to shift the costs of the delay to Pleasanton.

On June 14, 2019, Pleasanton filed an opposition on the ground that it served prior written notice to Student's previously filed complaint and no further response is required.

On June 14, 2019, Student filed a response to the opposition. On June 17, 2019, Pleasanton filed a response to Student's response.

APPLICABLE LAW

A local educational agency is required to file a response to a due process hearing request (complaint) within 10 days of receiving the complaint. (20 U.S.C. § 1415(c)(2)(B).) The response shall specifically address the issues raised in the complaint. (20 U.S.C. § 1415(c)(2)(D); 34 C.F.R. § 300.508(f).)

If the local educational agency has sent prior written notice to the parent, under California Education Code 56500.4 and Section 300.503 of Title 34 of the Code of Federal Regulations, regarding the subject matter contained in the complaint it need not file an additional response. (20 U.S.C. § 1415(c)(2)(B), (D).)

DISCUSSION

Student contends the hearing must not go forward as Pleasanton failed to file a response to her complaint. Pleasanton contends that it served prior written notice on Student regarding the subject matter of her complaint.

Pleasanton served prior written notice on April 29, 2019, regarding Student's first amended complaint filed on March 17, 2019 and dismissed on May 7, 2019. Pleasanton's prior written notice in that matter addresses only some of the same issues raised in Student's complaint in this case. Pleasanton has not complied with the requirement to file a response specifically addressing the issues raised in Student's complaint.

Student seeks remedies of cost shifting and a delay in hearing as a result. Student cited no authority for cost shifting in a case where a local educational agency mistakenly believed it complied with complaint response requirements. Moreover, the Individuals with Disabilities Education Act does not require OAH to delay a hearing indefinitely when a response has not been filed with OAH. OAH regularly addresses such matters during prehearing conferences by ordering the local educational agency to file a response before the first day of hearing. Nothing more is required here.

Student's motion to compel a response to her complaint is granted. All other requests for relief are denied.

ORDER

1. Student's motion to compel a response to her complaint is granted.

2. Pleasanton shall file a response specifically addressing the issues raised in the complaint no later than 5:00 p.m. on June 26, 2019, four business days prior to the first day of hearing.

3. The matter shall proceed for prehearing conference and hearing on the dates previously scheduled.

IT IS SO ORDERED.

DATE: June 21, 2019



COLE DALTON
Administrative Law Judge
Office of Administrative Hearings