BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN BRUNO PARK SCHOOL DISTRICT.

OAH CASE NUMBER 2019070384

ORDER DENYING MOTION TO COMPEL SAN BRUNO TO PROVIDE A SUFFICIENT RESPONSE TO COMPLAINT

On July 10, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Bruno Park School District.

On July 11, 2019, OAH provided both parties with the Scheduling Order in this matter. It requires any prehearing motion be filed no later than three business days prior to the prehearing conference absent good cause. On August 8, 2019, OAH continued this matter on the parties' motion, and reset the prehearing conference date to August 26, 2019. Accordingly, motions were ordered filed no later than August 21, 2019.

On August 26, 2019, the prehearing conference commenced and Student's counsel requested for the first time that a response to Student's complaint from San Bruno. San Bruno represented that it had served Parent with a prior written notice on

June 27, 2019, prior to the case filing in this matter. Student's counsel confirmed that Parent received the prior written notice at that time but did not believe it constituted a response to the complaint.

Out of an abundance of caution, the undersigned ordered San Bruno to file its responsive pleading by August 27, 2019, so that the hearing could proceed. Additionally, Student was permitted to file any associated motion by August 28, 2019 at 12:00 PM.

On August 27, 2019, San Bruno filed the prior written notice that it had previously served on Parent on June 27, 2019.

On August 28, 2019, Student's counsel filed a notice of insufficiency of San Bruno's response to Student's complaint. San Bruno filed opposition to Student's notice of insufficiency on August 29, 2018.

APPLICABLE LAW

Title 20 United States Code section 1415(b)(3) requires a school district to provide prior written notice to the parents of a child whenever a school district proposes to initiate or change, or refuse to initiate or change the identification, evaluation, or educational placement of the child, or a provision of a free appropriate public education of a child. The purpose of this provision is to ensure parental participation in the development of a child's individualized educational program under the Individuals with Disabilities Education Act. (20 U.S.C. § 1415(b)(1).)

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 sub. (d)(2)(A); 20 U.S.C. §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 agency to "send to the parent a response" to the due process complaint if the school district has not sent a 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.

DISCUSSION

Student does not dispute that San Bruno served Parent with a prior written notice at or around June 27, 2019. Student asserts that it is insufficient on two grounds. First, that it could not be responsive because it was filed before San Bruno knew what was in Student's complaint. Second, Student objects to the content of the response, contending that it did not contain the level of detail required by the IDEA. Student requests OAH order San Bruno to file a sufficient response to the complaint. Student also does not oppose a continuance, but the undersigned does not construe that language as a motion to continue this matter.

Student's arguments are unpersuasive. Both federal and State law permit a school district to rely on a prior written notice rather than filing a response to a due process complaint. Secondly, Student's motion to compel San Bruno to respond to his complaint is denied because he did not establish good cause as to why this request was untimely made. Student concedes that he received the prior written notice but not a response to the complaint. Had Student believed he was entitled to a response, he was aware it that he did not receive a response within 10 days of filing. The complaint was filed July 10, 2019, and a response, had one been required, was due on Monday July 22,

2019. However, Student failed to file a motion to compel a response at that time. Nor did he file a motion to compel at any time after July 22, 2019, through August 21, 2019, the time period allowed for prehearing motions in this matter.

As required by OAH's Scheduling Order, any prehearing motion must be filed three business days prior to the prehearing conference. Thus, prehearing motions were due in this matter on August 21, 2019. Student had a 30-day window to make this request and he failed to do so. Instead, for the first time, Student makes an oral motion during the prehearing conference to compel a response. Out of an abundance of caution, the administrative law judge ordered San Bruno to file its response with OAH by August 27, 2019, before the matter proceeded to hearing.

On August 27, 2019, San Bruno filed the prior written notice that Student concedes was served on Parent in June of 2019. Thus, San Bruno persuasively showed that it had previously served Parent prior written notice in June 2019, and did not need to file a response under 20 U.S.C. §1415(c)(2)(B)(i)(I) as Student contends. Further, San Bruno filed the previously served prior written notice and did not file a new response to the complaint. As such, there is no new documentation that would establish good cause for a late-filed motion. Further, counsel's reasoning that he did not know that the prior written notice was a response to the complaint also does not amount to good cause. If counsel did not realize the prior written notice was a response to Student's complaint, he had 30 days with which to file a timely motion in order to resolve the matter. Accordingly, Student did not establish good cause as to why he untimely filed the motion to compel Student's response.

Since Student failed to establish good cause for filing an untimely motion, the motion to compel Student's response is denied, and the challenge of insufficiency of the response will not be addressed.

IT IS SO ORDERED.

DocuSigned by:
Cynthia Fritz
3054C9C1F7E040A...

DATED: August 29, 2019

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings