BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2025020023

ORDER DENYING REQUEST FOR ENTRY OF DEFAULT

FEBRUARY 21, 2025

On January 30, 2025, Student filed a request for due process hearing, or complaint, with the Office of Administrative Hearings, or OAH, naming Fremont Union High School District.

On February 18, 2025, Student filed a request for entry of default, on the basis that Fremont Union had not filed a timely response to the complaint. Student requests that OAH prevent Fremont Union from participating in the due process hearing.

On February 18, 2025, Fremont Union filed a response to Student's complaint, after Student filed the request for entry of default.

On February 20, 2025, Fremont Union filed an opposition to Student's request for entry of default and Student filed a response to Fremont Union's opposition.

The Individuals with Disabilities Education Act, or IDEA, requires a local educational agency to respond to a due process complaint within 10 days of receiving the complaint, if the agency has not sent prior written notice regarding the subject matter of the complaint. (20 U.S.C. § 1415(c)(2)(B)(i)(I).) The United States Court of Appeals for the Ninth Circuit held that a due process hearing cannot proceed until the local educational agency files a response to the complaint. (*M.C. v Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.) The Ninth Circuit reasoned that a response to the complaint provides notice of the issues in dispute and binds the answering party to a position. (*Ibid.*) In circumstances where the local educational agency fails to file a timely response, resulting in delay of the hearing, OAH may shift the cost of the delay to the agency, regardless of who is ultimately the prevailing party at hearing.

Here, Fremont Union filed a response to the complaint 19 days after Student served the complaint. The hearing, set for March 18 through 20, 2025, has not been delayed by the late filed response. Nothing in the law requires, or even suggests, that a local educational agency be precluded from participating in a due process hearing as a penalty for filing a late response to a complaint. Even where the local educational agency fails to file any response, the remedy is to continue the hearing, if necessary, and order the agency to file a response. Other arguments raised by the parties, such as mootness, summary judgment, and dismissal, had no impact on the determination of these issues and are, therefore, not addressed in this Order.

Accordingly, Student's motion for entry of default is denied. The matter shall proceed on the dates currently scheduled.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings