BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020030864

ORDER GRANTING MOTION TO COMPEL RESPONSE TO REQUEST FOR DUE PROCESS HEARING

APRIL 9, 2020

On April 23, 2020, Student filed a request for due process hearing naming San Diego Unified School District as respondent. The request for due process was served on the respondent by facsimile and by U.S. Mail on March 23, 2020. On April 2, 2020, Student sent a copy of the complaint via email on San Diego's Due Process Department Program Manager, pursuant to her request.

On April 3, 2020, Student filed a motion to compel San Diego's response to its request for due process asserting that San Diego refused to accept service of the

request for due process and failed to file a timely answer to the request. On April 7, 2020, San Diego filed a notice of representation and an opposition to the motion which included a request for sanctions against Student. On April 8, 2020, Student filed a reply to San Diego's opposition.

San Diego argues that it does not have access to its mail or facsimile machine to accept service of a document and has not consented to email service. According to San Diego, due to the current Covid-19 health emergency, it closed its offices beginning March 13, 2020, and all personnel are working at home except those needed for essential services. San Diego asserts that all legal documents sent to San Diego Unified School District during the time the office is closed will be considered served when the office reopens. San Diego also asserts that, due to the closure, access to staff and records necessary to respond to the due process complaint are limited. San Diego seeks an order sanctioning Student for filing this motion, alleging that Student knew San Diego had not been served; and Student misled OAH by asserting San Diego had been served with the complaint.

Student asserts that San Diego was properly served on March 23, 2020 by facsimile and mail and was served again on April 2, 2020 by email to San Diego due process office staff. Student argues that San Diego has not ceased all operations and is being selective about its responses to due process cases.

MOTION TO COMPEL ANSWER TO REQUEST FOR DUE PROCESS

SAN DIEGO HAS BEEN SERVED IN THIS ACTION

State and federal law require that an answer be provided to a request for due process within 10 days of the date the request for due process is received by the respondent if the local educational agency has not sent a prior written notice to the

Parents regarding the subject matter contained in the Parents' due process complaint notice. (20 U.S.C. § 1415 (c)(2)(B)(i)(I); Ed. Code § 56502(d)(2).)

San Diego has provided no legal authority supporting its unilateral declaration that its decision to close its office in response to the Covid-19 health emergency shields it from all state and federal timelines pertaining to due process hearings under the Individuals with Disabilities in Education Act, also called IDEA, until a date in the future San Diego chooses. Guidance from the federal Department of Education in relation to the Covid-19 states, "[i]f an LEA continues to provide educational opportunities to the general student population during a school closure, it must ensure that students with disabilities also have equal access to the same opportunities including the provision of a free, appropriate public education or FAPE." (United States Department of Education, Questions and Answers on Providing Service to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, Question A-1.) Proper provision of FAPE includes the opportunity for the parent to enforce the IEP. (*M.C. by and through M.N. v. Antelope Valley Union High School District,* (2017) 858 F.3d 1189, 1198.)

Unlike the California state courts, which have closed many facilities to new filings, OAH remains operational. No federal orders have been issued in response to the Covid-19 health emergency, amending the timelines applicable to IDEA due process hearings.

San Diego also remains operational. Staff are teaching distance learning courses as evidenced by San Diego's attachments. Special education administrative staff are still addressing due process complaints, as admitted in its pleadings.

There is no dispute that the complaint in this matter was served to the correct address on March 23, 2020. Nor is there a dispute that the district received the

complaint via email pursuant to its employee's request. San Diego has been served in this matter.

SAN DIEGO IS NOT PREJUDICED BY HAVING TO ANSWER THE COMPLAINT

San Diego asserts, without evidence, that Staff does not have access to school records and do not have the ability to do research to respond to due process complaints. While the declaration of the Program Manager for the San Diego Due Process Hearings and Mediation Department states, "I do not have access to proper documentation or District files in order to provide meaningful response to any due process complaint field after the District's initial closure announced on March 13 2020," the term "proper documentation" is not defined and emails submitted as evidence by both sides indicate she continues to work remotely on due process matters.

Furthermore, no evidence has been submitted establishing that teachers and special education administrators are unavailable via email and telephone while working at home. Therefore, the assertion that answering this complaint is not possible lacks credibility. However, even if staff and faculty were not available to assist with a response to the complaint, San Diego has offered no authority establishing that access to additional personnel is a pre-requisite to filing an answer to a due process complaint under state or federal law.

San Diego has offered no authority for the proposition that it can continue to offer special education services while unilaterally declaring itself unavailable for enforcement of its obligations under the IDEA. San Diego is required to respond to the request for due process.

SANCTIONS

Requests for sanctions should be reserved for egregious conduct such as a frivolous claims that lack evidentiary foundation, or situations in which there is evidence of intent to harass. Here, no evidence has been presented that this motion was filed solely to harass San Diego or its counsel. In this case, even had this motion been filed separately, as would have been required, San Diego has submitted no evidentiary basis for an order to shift costs in this matter. San Diego's request for sanctions is denied.

ORDER

1. San Diego is ordered to file an answer to the complaint in this matter.
2. San Diego's request for sanctions is denied.

IT IS SO ORDERED.

DocuSigned by:
Penelope S. Pahl
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Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings