

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL  
DISTRICT.

OAH CASE NO. 2012060148

ORDER DENYING MOTION RE:  
CONDUCT OF HEARING

On June 1, 2012, the Office of Administrative Hearings (OAH) received a due process hearing complaint (Complaint) from Parents on behalf of Student (collectively, Student). The Complaint named Cupertino Union School District (District) as the respondent. On June 11, 2012, the District filed a Motion to Dismiss. The Order denying the Motion to Dismiss was served on the parties on June 20, 2012. On June 22, 2012, Student filed the within motion, entitled “Motion to Occur the Hearing Only in the Absence of the Respondent” (Motion). The Motion contends that District did not file a Response to Student’s Complaint within 10 days of receipt of the Complaint, and therefore the District should be precluded from appearing at and presenting any evidence at the hearing in this matter. On June 25, 2012, District filed opposition to the Motion, contending that Student was seeking a default prove-up hearing, which is not available in special education due process matters under these circumstances, that it timely filed a response to the Complaint by filing its Motion to Dismiss, and that, after the denial of its Motion to Dismiss, District filed a response to the Complaint. District filed a response to the Complaint on June 25, 2012. Student filed a reply brief in support of the Motion on June 26, 2012.

APPLICABLE LAW

Title 20 USC section 1415(c)(2)(B)(ii) of the Individuals with Disabilities Education Act (IDEA), and California Education Code section 56502, subdivision (d)(2)(A), require the respondent to file a response to a due process hearing complaint within 10 days after receipt of the complaint. Further, if the respondent local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the complaint, the respondent shall send to the parent a response that includes: (1) an explanation of why the agency proposed or refused to take the action raised in the complaint; (2) a description of other options that the individualized education program (IEP) team considered and the reasons why those options were rejected; (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action;

and (4) a description of the factors that are relevant to the agency's proposal or refusal. (20 U.S.C. § 1415(c)(2)(B)(i)(I); Ed. Code, § 56502(d)(2)(B).)

## DISCUSSION

By this Motion, Student seeks to preclude District from appearing at hearing and presenting any evidence to support its defense of the Complaint, based upon District's alleged failure to comply with the statutory requirement that District file a timely response to Student's Complaint. Student denies that this constitutes a request for a default prove-up hearing but, as a practical matter, it does. While the IDEA and the Education Code impose an obligation on the District to file a timely response to Student's Complaint, they do not authorize an administrative law judge to preclude the District from appearing at hearing and producing evidence based upon the District's failure to file a timely response to a due process hearing complaint.

Student cites California Government Code section 11506 in support of the Motion, but that statute is inapplicable. Government Code section 11506 provides that, if a respondent does not file a "notice of defense" to an accusation, the respondent has waived its right to a hearing, "but the agency in its discretion may nevertheless grant a hearing." Read in context, that statute applies to a response to an accusation in a license revocation hearing, not to a response to a special education due process complaint.<sup>1</sup>

## ORDER

The Motion is DENIED. All assigned hearing dates are confirmed.

Dated: June 26, 2012

/s/

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ELSA H. JONES  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup>In view of this analysis, there is no need to determine whether the District timely responded to the Complaint.