

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAMALPAIS UNION HIGH SCHOOL
DISTRICT,

Plaintiff,

v.

D. W.,

Defendant.

Case No. [16-cv-04350-HSG](#)

**ORDER TO MEET AND CONFER
REGARDING FEE REQUEST**

Re: Dkt. No. 63

Pending before the Court is Defendant D.W.’s motion for attorney’s fees under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415(i)(3). See Dkt. No. 63.

On September 21, 2017, the Court denied the parties’ cross-motions for summary judgment seeking review of the administrative law judge’s decision and affirmed the ALJ’s decision in its entirety. See Dkt. No. 55 at 28. The Clerk entered judgment that same day. See Dkt. No. 56.

D.W. brought a motion for attorney’s fees on February 27, 2018, more than five months after the entry of judgment. See Dkt. No. 57. But the Federal Rules of Civil Procedure require that a motion for attorney’s fees be filed within 14 days after the entry of judgment, unless a statute or court order modifies that deadline. See Fed. R. Civ. P. 54(d)(2). This 14-day time limit is “not jurisdictional.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 889 (9th Cir. 2000) (internal quotation omitted). However, “[f]ailure to comply with the time limit in Rule 54 is a sufficient reason to deny a motion for fees absent some compelling showing of good cause.” In *re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 972 (9th Cir. 2007) (citing *Kona Enterprises, Inc.*, 229 F.3d at 889–90).

On December 6, 2018, the Court gave counsel for D.W. an opportunity to make a


1 “compelling showing of good cause” for why she failed to bring her motion for attorney’s fees
2 within the statutory time period. See Dkt. No. 69. Counsel explained that she had believed the
3 statute of limitations was based on an analogous state action, rather than Rule 54, citing Meridian
4 Joint School District No. 2 v. D.A., 792 F.3 1054 (9th Cir. 2015). See Dkt. No. 70 at 1–2. In
5 addition, counsel explained that she is a sole practitioner and had “a number of clients . . . that
6 required her immediate attention” at the time judgment was entered. Id. at 3. Counsel requested
7 that her late application be considered excusable neglect. Id. at 3–5.

8 The Court finds that counsel for D.W. has made a sufficiently compelling showing of good
9 cause as to why the motion for attorney’s fees was made more than 14 days after entry of
10 judgment. Accordingly, the Court will exercise its discretion to allow D.W.’s claim for fees to
11 move forward. See *In re Veritas*, 796 F.3d at 974 (noting that whether to allow late fee request “is
12 a decision committed to the discretion of the district court”).

13 However, rather than adjudicate the individual line items of D.W.’s request for attorney’s
14 fees and costs at this time, the Court will give the parties one more opportunity to come to an
15 agreement on the proper amount of fees and costs. To that end, the Court **ORDERS** the parties to
16 meet and confer regarding D.W.’s request, in the hope that they can come to a negotiated
17 agreement. If the parties do not submit a statement by February 15 that they have reached an
18 agreement, the Court will review D.W.’s and the District’s submissions, determine the appropriate
19 amount of fees and costs, and order the District to pay them.

20 **IT IS SO ORDERED.**

21 Dated: 2/1/2019

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23 HAYWOOD S. GILLIAM, JR.
24 United States District Judge
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