BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018041136
v.	ORDER DENYING MOTION TO DISMISS
PITTSBURG UNIFIED SCHOOL DISTRICT.	

On April 25, 2018, Student's Foster Parents filed a request for due process hearing (complaint) on Student's behalf naming Pittsburg Unified School District as respondent. On May 18, 2018, Pittsburg filed a request to dismiss the complaint asserting that Student failed to establish that her foster parents have standing to bring the complaint. Pittsburg questions whether Foster Parents hold educational rights on Student's behalf, given that the order indicates the biological parents' educational rights were retained.

On May 22, 2018, Student filed an opposition to the motion asserting that Foster Parents held a court order establishing Foster Parents as educational rights holders on behalf of Parents. On May 22, 2018, Pittsburg filed a reply to Student's opposition questioning why a copy of the order was not attached to Student's opposition. On May 29, 2018, the undersigned issued an order requiring Student to produce evidence of holding educational rights for Student by June 4, 2018. Pittsburg was offered until June 7, 2018 to file any opposition to the document filed by Student.

On June 4, 2018, Student filed a copy of an "Order Designating Educational Rights Holder" signed on March 7, 2018 by Judge Rebecca Hardie, of the Superior Court of Contra Costa County. This document was accompanied by a declaration by Student's counsel authenticating the copy as true and correct. On June 5, 2018, Pittsburg filed an opposition to the order filed by Student asserting it did not establish Foster Parents as educational rights holders.

Student's Custodial History

Student is a child with multiple, serious physical health issues. Student was removed from the custody of her biological parents on December 6, 2017. On January 23, 2018, Student was placed with Foster Parents.

ORDER DESIGNATING EDUCATIONAL RIGHTS HOLDER

On March 7, 2018, Judge Hardie issued an "Order Designating Educational Rights Holder" appointing "Foster Parent" as educational rights holders. The identity of Student's Foster Parents is listed as "Confidential" as are their contact details.[1] Section 3 of the form order is completed, appointing Foster Parents as educational rights holders and authorizing them to make both educational and developmental services decisions on Student's behalf. As appointed educational rights holders, Foster Parents are authorized to have access to Student's educational and developmental services records and information to the extent permitted by law. The order states that it applies to any local educational agency, school, school district or regional center serving Student. Pursuant to the March 7, 2018 court order, the rights of Parents to make educational decisions were retained.

On April 25, 2018, Foster Parents filed the complaint that is the subject of this motion to dismiss on Student's behalf. Parents were not named in the complaint as participants in the action.

APPLICABLE LAW

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..) Here, Pittsburg challenges Foster Parents' standing to proceed with the due process hearing. Standing is a threshold issue which must be resolved in order to establish OAH's jurisdiction over a case.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

The due process hearing procedures extend to a parent or guardian as defined in Education Code section 56028. (Ed. Code § 56501, subd. (a).) The Juvenile Court has the authority to assign educational rights to a person other than a student's biological parents. (Welf. & Inst. Code § 361.) Here, Student is a foster child. The Superior Court of Contra

[1] While the names of Student's Foster Parents have been written in next to the word "Confidential" on the Form Order, JV-535, dated March 7, 2018, no evidence has been presented as to who wrote in the names of Student's Foster Parents or when that information was added. The undersigned accepts Mr. Cruz's representation, as an officer of the court, that this is a true and correct copy of the order issued by the Contra Costa Superior Court.

Costa County assigned educational rights to Student's Foster Parents on March 7, 2018, as defined in California Rule of Court, section 5.502. That rule states,

> "Educational rights holder" means the adult identified or appointed by the court to make educational or developmental-services decisions for a child, nonminor, or nonminor dependent. If the court limits a parent's or guardian's decision making rights and appoints an educational rights holder, the appointed rights holder acts as the child's or youth's parent, spokesperson, decision maker, and "authorized representative" as described in sections 4512(j) and 4701.6(b) in regard to all matters related to educational or developmental-services needs … unless the court orders otherwise ." (Ca. Rules of Court, rule 5.502(13).)

Education code section 56501 subdivision (a), states that the due process hearing procedures, including the right to file a request for due process, extend to the parent or guardian of a child "as defined in [Education Code] section 56028." Education Code section 56028, defines foster parents as "Parents" only if the authority of the biological parents to make educational decision on the child's behalf specifically has been limited by court order in accordance with section 300.30 (b)(1) or (2) of the Code of Federal Regulations . (Ed. Code 56028(a)(2).) That federal regulation states that, in instances of more than one party being qualified to act as parent, the biological parent is presumed to be the parent, unless a judicial decree or order identifies a specific person or persons, to make educational decisions on behalf of a child. If those circumstances are present, then that person or persons identified in the judicial order shall be determined to be the Parent pursuant to the IDEA. (34 C.F.R § 300.30(b)(2).)

DISCUSSION

Here, court documents submitted by the parties to this matter demonstrate that Foster Parents have been identified and appointed as educational rights holders. Their appointment includes the right to make all educational and developmental services decisions on behalf of Student. Parents' rights to make decisions for Student were limited by this order. They no longer retain exclusive educational rights. Foster Parents have the authority of Parents until the Court orders otherwise.

This conclusion is reinforced by California Rule of Court, rule 5.650 regarding Appointed Educational Rights Holders. This rule declares that use of the Judicial Council JV-535 mandatory Order form, which was used in this matter to appoint Foster Parents as educational rights holders, is for instances when the court is choosing to limit, even temporarily, Parents' educational rights. (Ca. Rules of Court, rule 5.650.(a).) There would have been no need for the Order had the Court not intended to limit Parents' educational rights which the court did when it appointed Foster Parents to make educational decisions on behalf of Student as opposed to leaving those decisions in the hands of the biological parents alone.

When the court appoints an educational rights holder, after limiting a Parent's educational or developmental services decision making rights, the Parent's rights are transferred to the educational rights holder unless the court specifies otherwise in its order. (Ca. Rules of Court 5.650(e).) Here, the Court has stated that Parents retain their educational rights. However, nowhere in the court order is it stated that the educational rights afforded to Foster Parents are dependent on the approval of the biological parents. Pittsburg has provided no authority for the proposition that Foster Parents, having been granted educational rights by the court, are only allowed to protect Student's interests if the biological parents agree. Such a conclusion without evidence or authority, would be directly contrary to the appointment of Foster Parents as holders of Student's educational rights while Student is in their custody. Parents retain educational rights; not veto rights. Foster Parents have been granted the right to proceed with this due process hearing on Student's behalf.

ORDER

Pittsburg Unified School District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: June 6, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings