

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,

v.

PITTSBURG UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080489

ORDER FOLLOWING PREHEARING CONFERENCE  
GRANTING REQUEST TO RESET TIMELINES

SEPTEMBER 20, 2021

On September 20, 2021, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent did not appear on behalf of Student. The ALJ left a voice message for Parent at the telephone number provided in the due process hearing request, called a complaint, at 10:06 AM requesting Parent join the video PHC or to contact OAH for assistance. OAH resent the link for the video PHC to all parties at 10:10 AM. The PHC proceeded at 10:15 AM. OAH did not receive a response from Parent prior to the PHC.

Attorney Ankita Thakkar appeared on behalf of Pittsburg Unified School District. The PHC was recorded. Based upon discussion with Pittsburg Unified, the ALJ issues the following order:

## REQUEST TO RESET TIMELINES

On August 16, 2021, Parent on behalf of Student filed a complaint with OAH naming Pittsburg Unified. Student served Pittsburg Unified a copy of the complaint by email on August 16, 2021. On September 17, 2021, Pittsburg Unified filed a notice of representation and a motion to continue the hearing. OAH provided Pittsburg Unified's attorney a copy of Student's complaint on September 17, 2021. Pittsburg Unified argues a continuance is necessary as Pittsburg Unified was only made aware of the complaint on September 17, 2021. The motion to continue is treated as a request to reset the hearing timelines.

The party filing the complaint, is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A), which includes proper service of the complaint.

Service of documents in special education due process proceedings is governed by the California Code of Regulations, title 5, section 3083, which states that service of notice, motions, or other writings pertaining to special education due process hearing procedures shall be delivered personally or sent by mail "or other means" to the party's attorney or other authorized representative. Unless otherwise specified, the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or "by other electronic means as provided by regulation, in the discretion of the sender."

There is no specific provision or regulation authorizing service of documents solely by email.

Although not specifically applicable to special education due process proceedings, Code of Civil Procedure section 1010.6 states, in pertinent part, that electronic service of documents is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action, or the court has ordered electronic service.

Here, Student failed to properly serve Pittsburg Unified a copy of the complaint. At the time of the filing of the complaint, Pittsburg Unified had not indicated it had agreed to service of the complaint by email. Pittsburg Unified did not receive a copy of the complaint until September 17, 2021. Accordingly, the due process hearing timelines are reset from September 17, 2021, the date Pittsburg Unified received the complaint. All dates are vacated. OAH will issue a scheduling order with new dates.

## MOTION TO DISMISS COMPLAINT

On September 20, 2021, Pittsburg Unified filed a motion to dismiss Student's complaint. Pittsburg Unified contends the claims raised in the complaint are outside OAH's jurisdiction as they do not relate to the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to Student under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), referred to as the IDEA.

The purpose of the IDEA 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 to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

Pittsburg Unified’s motion to dismiss is taken under submission. Student may file with OAH, and serve Pittsburg Unified, a written response to the motion, no later than 5:00 PM on September 23, 2021. Service of Student’s response by email to Pittsburg Unified’s attorney shall constitute proper service to Pittsburg Unified.

IT IS SO ORDERED.

*Rommel P. Cruz*

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings