

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 GRANTING MOTION TO DISMISS WITH LEAVE TO
AMEND COMPLAINT

SEPTEMBER 24, 2021

On August 16, 2021, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Pittsburg Unified School District. The complaint contends Pittsburg Unified requested Student attend in-person instruction on school grounds and denied Student access to online classes. The complaint notes that Student is diagnosed with attention deficit hyperactivity disorder, is unable to focus, and is easily distracted. The complaint argues Student benefitted from attending online classes, and that denying Student access to online classes would be detrimental to him.

On September 20, 2021, Pittsburg Unified filed a motion to dismiss Student's complaint based on the complaint's failure to raise claims involving 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. Therefore, Pittsburg Unified contends Student's claims are outside OAH's jurisdiction, and therefore, should be dismissed. OAH did not receive a response from Student.

APPLICABLE LAW

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 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.)

DISCUSSION

Student's complaint fails to sufficiently raise claims involving the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to Student under the IDEA. The complaint as plead does not clearly raise claims within OAH's jurisdiction, as the complaint fails to sufficiently describe problems of alleged violations on the part of Pittsburgh Unified involving the assessment for, or the provision of, special education and related services to Student.

Student is permitted to file an amended complaint within 14 days of the date of this Order to sufficiently describe problems, and raise claims, involving the assessment for, and the provision of, special education and related services to Student. Student's failure to timely file an amended complaint will result in the dismissal of the complaint. Accordingly, Pittsburgh Unified's motion to dismiss the complaint is granted and Student is given leave to amend the complaint.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parent is encouraged to contact OAH for assistance if Parent intends to amend the due process hearing request.

ORDER

1. Pittsburg Unified's Motion to Dismiss is granted and Student is given leave to amend to file a sufficient complaint. All hearing dates are vacated.
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
4. If Student fails to file a timely amended complaint, the complaint shall be dismissed.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings