

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

PATHWAYS CHARTER SCHOOL,

Respondent.

OAH CASE NO. N 2008040301

**ORDER DENYING MOTION FOR
SUMMARY ADJUDICATION**

On April 7, 2008, the Office of Administrative Hearings (OAH) received a due process hearing complaint (complaint) from Mother, on behalf of Student. The complaint named Pathways Charter School (Pathways) as the respondent. On April 21, 2008,¹ Student filed a motion for summary adjudication alleging that because Pathways failed to submit a response to the complaint within 10 days of its receipt of Student's complaint, Student was entitled to a judgment in her favor. (20 U.S.C. § 1415(c)(2)(B)(ii).)² OAH did not receive an opposition brief from Pathways.³

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act (IDEIA), Section 1415(c)(2)(B)(ii), and California Education Code section 56502, subdivision (d)(2) require the opposing party to file a response to the complaint within 10 days after its receipt of the complaint. Further, within this ten days, pursuant to Section 1415(f)(1)(B)(i)(I), for local education agencies that have not sent a prior written notice to the parent regarding the subject matter contained in the complaint notice, the local educational agency shall send to the parent a response that shall include:

¹ Student submitted another request on April 22, 2008.

² All statutory citations are to Title 20 United States Code, unless otherwise noted.

³ Pathways filed a response to Student's complaint on April 21, 2008

- (aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;
- (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
- (cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- (dd) a description of the factors that are relevant to the agency's proposal or refusal.

DISCUSSION

Student seeks a default judgment against Pathways for its failure to file a response to Student's complaint. While the IDEIA and Education Code section 56502 create the obligation to file a response on a local education agency after a parent files a due process complaint, neither granted an administrative law judge the authority to impose a default judgment for a failure to file a response.⁴ This is in contrast to Section 1415(c)(2)(D) that requires an administrative law judge to evaluate the sufficiency of a due process complaint if a timely notice of insufficiency is filed. Thus, the IDEIA and Education Code section 56502 do not give OAH the authority to enter a default judgment.

ORDER

The motion for summary adjudication is denied. All assigned hearing dates are confirmed.

DATED: April 30, 2008



PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings
Special Education Division

⁴ A local education agency's failure to comply with the IDEIA may subject the agency to a compliance complaint by the parent to the California Department of Education. (*See*, Ed. Code, § 56045.)