

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010120300

ORDER DENYING MOTION TO ADD
PARTY

On December 6, 2010, parents on behalf of student (Student) filed a request for a due process hearing (complaint), naming West Covina Unified School District (District).¹ On January 7, 2011, the District filed a motion to add California Virtual Academy at Los Angeles (CVA) as a respondent in the case. Both Student and CVA have opposed the motion.

APPLICABLE LAW

Regarding joinder of a party, OAH considers the requirements of the Code of Civil Procedure. Under that Code, a “necessary” party may be joined upon motion of any party. Section 389, subdivision (a) of the Code of Civil Procedure defines a “necessary” party as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.) Children with disabilities who attend public charter schools retain all rights under federal and state special education law. (34 C.F.R. § 300.209(a); Ed. Code, § 56145.)

DISCUSSION

According to the District's moving papers, CVA is chartered through the District and is deemed to be a public school of the District for purposes of special education. The District admits that it is the local educational agency (LEA) responsible for providing special education services pursuant to Education Code section 47646. The District, however, argues that the memorandum of understanding between CVA and the District makes CVA "solely responsible for compliance [with] all state and federal laws regarding provision of special education services." According to the District, the memorandum of understanding also gives the District a right of indemnification from CVA "for any judgments or obligations resulting from acts or omissions" by CVA brought under a third-party lawsuit. On that basis, the District argues that CVA should be joined as a party because CVA has been serving Student since October 2009 and may be responsible for payment of some or all of any amounts awarded to Student as a result of this due process proceeding.

CVA opposes joinder on the basis that Student's complaint does not allege any facts showing wrongdoing by CVA. Student also opposes the District's motion on the basis that Student has no dispute with CVA.

The District's position is not well taken. If the District is the LEA responsible for Student's special education, then Student seeks relief against the appropriate party. Student's complaint does not allege any wrongdoing by CVA. To the extent that the memorandum of understanding may give the District contractual remedies against CVA, those remedies can be decided in a different forum.

ORDER

1. The motion to add California Virtual Academy as a party is denied.

2. All previously scheduled dates are confirmed.²

Dated: January 18, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

² CVA included with its opposition papers a notice of insufficiency (NOI) as to Student's complaint. Because the motion to join CVA as a party is denied, that NOI is moot.