

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009101576

ORDER DENYING MOTION TO ADD
PARTY

On October 29, 2009, Student and his parent (Student) filed a request for a due process hearing (complaint).¹ On November 11, 2009, Student filed an amended complaint. On January 6, 2010, the Capistrano Unified School District (District) filed a motion to add the Orange County Department of Education (OCDE) as a party. Both Student and OCDE 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.

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

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).

agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

DISCUSSION

The District argues that OCDE was the local educational agency (LEA) responsible for providing Student with a free appropriate public education (FAPE) during part or all of the time relevant to Student's due process complaint. Student and OCDE contend that the District was the LEA responsible for the conduct alleged in Student's complaint.

There is no need to join OCDE as a party to this case. Student has chosen to bring this case against the District, alleging that the District is the responsible LEA. If Student is mistaken as to the District's responsibility in whole or in part, the District can raise that as a defense at the hearing. There will be no prejudice to the District.

On the other hand, adding OCDE as a party to the case will cause prejudice to Student by delaying this matter. The Prehearing Conference in this case has already been held and the hearing will begin in approximately two weeks. If OCDE is joined now as a party, OCDE will no doubt seek a continuance of this hearing in order to prepare a defense. The District waited until the date of the Prehearing Conference to bring its motion to add OCDE as a party. It would not be appropriate to delay this matter.

ORDER

The motion to add OCDE as a party is denied. All previously scheduled hearing dates remain on calendar.

Dated: January 14, 2010

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings