

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010010743

ORDER GRANTING MOTION TO
AMEND

On January 19, 2010, Student filed a request for a due process hearing (complaint)¹ against the Oakland Unified School District (District) On March 5, 2010, Student filed an amended complaint, adding the Oakland Military Institute (OMI), a Charter School, as a party.

Neither District nor OMI submitted a response.

APPLICABLE LAW

A party may amend a complaint only if the hearing officer grants permission, or as otherwise specified.² (20 U.S.C. § 1415(c)(2)(E)(i).) The applicable timeline for a due process hearing shall recommence at the time a party files an amended complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).)

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.)

Additionally, 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.) Education Code section 47646, subdivision (a), provides in pertinent part that a child with disabilities attending a charter school shall receive special education instruction

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).

² The applicable timeline for a due process hearing shall recommence at the time a party files an amended Complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).)

“in the same manner as a child with disabilities who attends another public school of that local educational agency.”

DISCUSSION

Education Code sections 56500 and 56501, subdivision (a), establish two requirements for including an entity in a special education due process hearing. First, the entity must be a public agency “providing special education or related services.” (Ed. Code, § 56500.) Second, it must be “involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).)

Based on Student’s amended complaint, both District and OMI are public agencies, and both, according to Student’s amended complaint, are responsible for providing special education services to Student. The failure of OMI to provide special education services to Student is the central issue in Student’s complaint. Moreover, neither District nor OMI opposed Student’s motion to amend, adding OMI as a party.

ORDER

1. The motion to amend, which adds Oakland Military Institute as a party is granted. Henceforth, this matter shall be known as *Student v. Oakland Unified School District and Oakland Military Institute*.
2. Pursuant to section 1415(c)(2)(E)(ii), the applicable timeline for this due process hearing, including the resolution session, recommences as of the date of this order.
3. All previously scheduled hearing and mediation dates are vacated.
4. A new scheduling order will be issued.

Dated: March 16, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings